Workers' Compensation
Appeals Tribunal

Tribunal d'appel
des accidents du travail

SECOND REPORT

1986-1987

Ontario

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

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INTRODUCTION

The Workers' Compensation Appeals Tribunal is a tripartite tribunal established by statute in October 1985, to hear and determine appeals from decisions of the Ontario Workers' Compensation Board. It is an independent tribunal separate and apart from the Board itself. I am its first, and present, Chairman.

This is my second report since assuming the position of Chairman. In it I record the Tribunal's progress in its second year of existence (from October 1, 1986, to September 30, 1987), and report on matters which, in my view, will be of special interest or concern to one or more of the Tribunal's constituencies.

The report is the Chairman's report and not the institution's. By that I mean, particularly, that I have not sought my colleagues' explicit approval for the subjective content of the report. I do believe that the opinions in the report will be found, for the most part, to be generally shared by the members of the Tribunal and where I have particular reason not to be confident on that score I have so indicated. Nevertheless, the views expressed here must not be taken as corporate views.

It will be appreciated from the foregoing observation that this report, like my First Report, is not an "annual report" in the normal institutional tradition of such reports. It serves, in part, as the Tribunal's annual report in the traditional sense as it contains the objective information common to such reports. But it is also the Chairman's personal report to the Minister of Labour and to the Tribunal's various constituencies, mandated, I believe, by the fact that the major responsibility for the creation and operation of the institution is assigned by the legislation to the Chairman personally and not to the Tribunal as such.

ACKNOWLEDGEMENTS

The Tribunal's achievements in its second year are attributable once again to the commitment and talent of the Tribunal's extraordinary collection of members and staff. The consistent quality of the Tribunal's decisions evidence the especially strong contribution of the Tribunal's Vice-Chairs and employer and worker Members. I remain particularly deeply indebted to my Alternate Chairman, James R. Thomas, who continues to be my partner in this enterprise.

THE CHAIRMAN'S OVERVIEW

1. The Adjudication Process

During its second year, the Tribunal has continued to provide an adjudication process that in my opinion is fair, effective and appropriate. The process is sufficiently structured and controlled to permit the serious business typically confronted in Tribunal appeals to be dealt with seriously, and efficiently. It is not, however, dominated by its rules and is not found by most participants to be intimidating. As direct experiences with the Tribunal have deepened and broadened, early fears about legalistic tendencies in the Tribunal's procedures appear to have receded.

2. The Tripartite Feature

My colleagues and I are particularly proud of the Tribunal's success in taking full advantage of its tripartite character and making that aspect of its design a truly viable and valuable feature. One hallmark of this success has been the remarkably high percentage of unanimous decisions. However, because unanimous decisions are an infrequent phenomenon in the labour relations field — the only place where worker and employer communities have previously experienced a tripartite process — the worker and employer communities tend to regard the high

proportion of unanimous Tribunal decisions as evidence of some failure on the part of "their" representatives. This attitude is pressuring worker and employer members towards a more traditional partisan role and thus threatening the true effectiveness of the tripartite concept. It is, in my view, very important that the worker and employer communities come to a more sophisticated understanding of the representative members' role in the Tribunal's decision-making process.

This problem is examined at greater length in The Detailed Report which follows this Overview.

3. The Decisions

The Tribunal's written decisions are clear, intelligible and complete, and the reasoning they contain is generally, in my view, sound. Disapprobation of the Tribunal's conclusions from one side or another is not uncommon but it is rare for the quality of its reasoning to be challenged.

The body of Tribunal decisions — some 1300 in all as of September 30 — is, for the most part, internally coherent. With the various indices and other research aids the Tribunal provides, the cases are providing effective public access to the workers' compensation subject, generally, and are a source of authoritative information and direction about the Tribunal's concerns and interests. For the first time in Ontario, workers and employers and their representatives are being given the means of putting themselves on an even footing with the system's adjudicators in terms of understanding in the preparation of their cases the true issues.

The publication of the Tribunal's reasoned decisions is also creating an adjudication environment which promotes like treatment of like cases and allows for inconsistencies between cases to be identified and challenged by both worker and employer representatives and by the Tribunal itself. The process of comparing the decision analysis in one fact situation with that in another is promoting an increasingly more complete understanding of major issues.

It seems likely, as well, that the Tribunal's decisions are contributing to an enhanced understanding and a more informed and rational discussion of workers' compensation issues generally, not only within the Tribunal and in the worker and employer communities, but also within government, amongst legislators and at the Board itself. The reasoned nature of the decisions challenges others to respond in kind, and provides concrete, detailed information on which discussion and debate may focus.

4. The Issue Overload

The most significant feature of the Tribunal's experience during these first two years of its existence has been the pervasive issue overload with which it has had to grapple as a result of its position as a brand new adjudicative tribunal in an operationally mature but jurisprudence-bereft field of law.

The following is a partial list of the seminal issues of first impression which the Tribunal has had to address during this period.

There were — and continue to be — a large number of what might be characterized as threshold issues. For instance, what *is* the nature of an "appeal" as the term is used in the Act with respect to the Appeals Tribunal? What are the limits of the Tribunal's jurisdiction? (A question that has had to be faced time and time again and continues to be faced as the parade of novel fact situations passes in review.) What powers does the Tribunal have to set the issue agenda in various situations? What should determine what the issue agenda is to be? What is the standard of proof and what does it mean? How does the statutory benefit-of-doubt work? What is the effect of the presumption in section 3(3)? What are the standards of review to be applied to the various categories of Board decisions? What are the limits to the Tribunal's powers of investigation? What policy should be applied to the question of medical evidence? Is deference, as distinguished from merely respect, owed to the Board medical staff's opinions — to the Board's vocational rehabilitation experts' opinions? What constitutes sufficient medical evidence in various circumstances and when and under what procedure should the Tribunal be obtaining additional evidence? What is the status of Board policies and guidelines? Is the Tribunal authorized — obligated — to review them and, if so, against what criteria? How can the Tribunal's obligations and powers under section 15 be reconciled with the Board's privileges and powers? What criteria should govern the Tribunal's decisions in leave-to-appeal applications? In section 21 Applications? In section 77 Applications?

And then there are the operational issues: What is chronic pain? Does it exist? Is it compensable? What evidence is sufficient to support a chronic pain conclusion? How can a genuine case be distinguished from malingering? What might unreasonable motivation be evidenced by? Are all changes in interpretation retroactive? Fully? Why does the Board not comply with the court-approved definition of injury by accident? Is the Tribunal obligated to challenge that practice? When is an industrial disease not an industrial disease but a disablement? What does the Act mean by disablement? By industrial disease? By "accident"? By "maximal medical rehabilitation"? By "worker"? What does "arising out of employment" or "in the course of employment" mean — at the margins when applied in the infinitely variable fact situations which are found at this, the final stage of appeal? When is a

worker not "available" for employment and when does it matter? What is "suitable" employment? What constitutes a "partial" disability as opposed to a "total" disability? What does section 45(1) mean — really? What is a rating schedule? What does the Act require in the way of a schedule? Does the Board's Schedule meet the requirements? What is fibrositis or fibromyalgia? Is it an organic or psychological condition? Is it compensable? What is the role of pre-existing conditions? What causes degenerative disc disease — might it be an industrial disease? Can stress-related disabilities be compensable? How are heart attacks at work to be treated? How can section 8 be made sense of? Are executive officers really personally liable for disabilities covered by the Act? Are dependants' causes of action under the *Family Law Act* caught by the section 8 prohibition against civil litigation? Does section 8 prohibit product-liability civil litigation by workers? Do workers have *rights* to rehabilitation services?

I have gone to this length in describing some of the Tribunal's issue agenda in an effort to project a concrete impression of the Tribunal's issue-laden — issue-drenched — work environment. And yet the list represents only a portion of the parade of issues to be found in the decisions the Tribunal has issued to date and in the decisions which it is currently contemplating.

Nor did the issues present themselves in an orderly, well-defined fashion, or come forward at a convenient rate. "Parade" is not the right metaphor. An "infestation" of issues captures the experience better. The Tribunal found one thousand cases waiting for it when it arrived on the scene, and every case was dripping with issues of first impression. Furthermore, the Tribunal was forced to approach these issues from scratch in a virtual vacuum of helpful precedent. It was not engaged in incremental adjustments to a mature body of law which is the normal lot of adjudicators in the common-law system. Rather than pruning a garden, Tribunal Members found themselves hacking paths and clearings in an uncharted forest. Often, recognizing the existence of an issue and defining its nature was as difficult as resolving it.

The difficulty of the experience was exacerbated by the fact that, to a large extent, the Tribunal was on its own in this endeavour. Just as there was no extant body of law — no record of the Board's views on any issue — so there was no community of advocates experienced in dealing with the issues with which the Tribunal found itself confronted, and, as we have said, in many cases no advocates at all from one perspective or another. The advocate communities were experienced with the Board's application of the Act and with advocacy on the factual and medical issues in individual cases. But with respect to the multitude of subjects which the creation of the Tribunal put on the system's adjudication agenda for the first time, and the large number of Tribunal-related issues which the Tribunal's appearance had spawned, the advocate communities, like the Tribunal, were starting from scratch with nothing to work with.

Furthermore, because of the relatively infrequent involvement of experienced advocates in the Tribunal's processes during this pioneering period — as contrasted to the Tribunal's constant involvement — the Tribunal has found itself having to be out in front of the advocacy communities on most issues.

As was to be expected, particularly in a tripartite system, the process of issue identification and resolution in these circumstances has been a Tribunal pre-occupation which has consumed massive amounts of time and intellectual energy. It is a process which is particularly complicated by the fact that each new issue always arises in several cases at the same time. This circumstance has led to substantial inter-panel discussions and debate, and postponement of individual decisions while Tribunal consensus develops. The *Decision No. 915* process, with a large number of cases being officially put on hold while the Tribunal went through a structured process of coming to an understanding about the issues in permanent pension appeals, was merely a formalized, high-profile version of a process that to some extent occurs informally — interstitially and sometimes insensibly — around virtually every significant new issue.

The classic concept of panels of adjudicators as autonomous adjudicating entities operating wholly independently of one another, could not be sustained in these operating circumstances (if, indeed, it is a valid concept at all with respect to a multi-panel, specialized tribunal like the Appeals Tribunal). Panel autonomy and independence was held sacrosanct with respect to findings on factual and medical issues and with respect to the final decisions which each panel ultimately did reach on the generic issues. However, the process of trying to understand the dimensions and implications of generic questions of first impression and of exploring and of understanding the various possible answers to such questions was implicitly a process that had to be shared. Many of one's colleagues were struggling with the same questions at the same time, and from a system perspective, different answers to generic questions could be afforded at this stage only if they truly reflected a fully informed and thoroughly considered disagreement in principle. And even disagreements of that nature had then to be resolved in subsequent cases.

Internal Tribunal disagreements on generic issues lead to different results in like fact situations depending simply on who happens to be assigned to the hearing panel. Such a situation cannot be tolerated for long. And, at least during this its own formative period, when the Tribunal was confronted with developing an understanding of the

basic principles sufficient to give it a viable operating base, such disagreements had to be worked out within the Tribunal itself.

In a paper of his entitled "The Administrative Tribunal: A View From the Inside",[1] Professor Paul Weiler, speaking from his experience as Chairman of the B.C. Labour Relations Board, observed that "a realistic appreciation of the administrative world must emphasize its internal diversity as much as its common themes" and that "any map of the administrative terrain which does not indicate that, is useless for legal navigation."

From my experience as an inside witness of the Appeals Tribunal's operations I can testify to the truth of Professor's Weiler's observation. In my opinion, one of the most important influences on this Tribunal's "internal diversity" has been the overload of fundamental issues which the Tribunal has had to tackle and resolve during its formative period.

5. The Tribunal's Management and the Pre-Hearing Caseload

The Tribunal has continued to develop increasingly successful internal management systems. The processing of the Tribunal's work from receipt of appeals or applications to the completion of the hearing is now being handled from an administration point of view efficiently and appropriately. By the end of the reporting period, apart from the permanent pension cases which had been held pending *Decision No. 915,* there was no significant backlog at the pre-hearing and hearing stages.

In dealing with the transitional backlog, the Tribunal has been assisted significantly by the fact that the incoming caseload did not materialize at the expected levels. There is no doubt we overestimated the capacity of our planned resources. As indicated in the First Report, we planned to hold hearings, and deal with applications which could be disposed of without a hearing, at a total monthly rate of 215 cases. However, experience has determined that with the resources now in place it is not realistically possible to do better than about 185 a month — and that, with everything and everybody working at an optimum level. The normal year-long average rate will be in the order of 160 to 170 cases per month. Fortunately, this production level has proved adequate to deal with the actual incoming caseload and to dispense with the backlog at the pre-hearing and hearing stages.

6. The Post-Hearing Delays

While the Tribunal is in good shape from a production perspective at the pre-hearing and hearing phases of its operation, the same cannot be said for the post-hearing phase. The Tribunal has not been able in its second year to bring its backlog in the *post-hearing,* decision-making part of its process, under reasonable control.

From a statistical perspective, the problem is not overwhelming. Since its inception, the Tribunal has made and released approximately 1,300 interim and final decisions and the average time between completion of the hearing and the issuing of those decisions was 3.7 months. However, in significant numbers of cases it has taken more than six months to issue decisions following completion of the hearing and a number of those have taken twelve months or more. At the end of the reporting period, there were 207 decisions in which the hearing has been completed for more than six months without a decision issuing, and, of those, 47 have been waiting for over 12 months. Not all of these were ready-to-write or had been ready-to-write throughout that period. These numbers include cases held up by the need for post-hearing investigations or submissions (about 20% of all cases). A substantial proportion, however, do reflect a long delay after the ready-to-write point has been reached.

The reasons for these delays will be examined fully in the report which appears below. They are, however, predominantly the inescapable consequence of the issue overload. After trying a number of strategies for bringing this problem under control which have not been successful, as of the end of the reporting period measures have been adopted which I believe provide grounds for confidence that the problem of excessively delayed decisions will be resolved in 1988. These measures are described in the detailed report which follows.

7. The Leading Case Strategy on Permanent Pension Appeal

In this overall assessment of the year's performance as viewed from the Chairman's special perspective, it is, of course, impossible to ignore the Tribunal's leading case strategy in respect of permanent pension appeals. This strategy was described at length in the First Report. It culminated on May 22, 1987, with the release of the Tribunal's *Decision No. 915.*

The strategy took longer to accomplish than had been anticipated. At close quarters, the issues surrounding the provision of compensation benefits for permanent partial disabilities proved to be more complicated, controversial and difficult than even the Tribunal had supposed, at the time the need for this strategy was first recognized. But we have emerged from the process with a decision which provides an informed and viable basis for now proceeding to deal on the merits with individual appeals in these inherently complex and exceptionally difficult cases.

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[1] (1976), 26 *U.T.L.J.* 183 at p. 213, as quoted in an unpublished 1987 paper entitled Tripartite Adjudication by Faye W. McIntosh-Janis.

By the time *Decision No. 915* appeared, approximately 500 permanent pension appeals were on hold pending its release. As of the end of the reporting period, the proceeding of these appeals was undergoing a further short delay while the Tribunal and the Board worked out their appropriate respective roles in these cases in the light of the Board's subsequent adoption of its own new policy on chronic pain.

One very unsatisfactory consequence of the pension appeals leading case strategy was, of course, the delays in the processing of pension appeals. By the end of this reporting period, some of these cases will have been waiting on the Tribunal's books for almost two years and, in some of those cases, the appeal will have been filed with the previous Appeal Board some months before that. The 915 analysis also makes it clear that these cases will not typically be susceptible to quick processing even once they are reached. With the large number of such cases, it is apparent that it will still be several months before all of the existing backlog can be disposed of once the present issue with the Board is resolved.

The delays in these cases are a particular manifestation of the general problem of delayed decisions referred to earlier. These cases fell to be decided at the point of an historic transition in the Ontario workers' compensation system and at the point of the creation and early development of a wholly new external appeals tribunal. Their disposition was delayed in order that the Tribunal might take the time needed to develop — in the midst of its own birthing process — an adequate understanding and a fully informed and properly considered position with respect to a set of issues that are truly unique in their sophistication, difficulty, contentiousness and significance.

I am satisfied that, from the Tribunal's point of view, in the circumstances that confronted the Tribunal in October and November of 1985, the pensions appeal strategy was inescapable. The time and resources that strategy absorbed, and the delays in individual cases which it necessitated, were both unavoidable and justified.

8. The Tribunal's Overall Performance

I am personally content that, in the two years that have elapsed since the Appeals Tribunal came into existence, the Tribunal's mandate has been pursued appropriately and, measured against any reasonable criteria of progress, successfully. The delay in the decision-making process is the remaining major structural problem, and there are reasonable grounds for believing that that will be brought under control in the near future.

It remains, of course, true, that the Tribunal's decisions are often controversial in the eyes of either the employer or worker communities. Employers, for instance, are generally unhappy with the Tribunal's chronic pain decisions, with the Tribunal's interpretation of the definition of "accident", and often with the Tribunal's findings on factual and medical issues. Workers, on the other hand, are generally unhappy with the Tribunal's conclusions on the interpretation of section 45(1) and on the validity of the Rating Schedule, and they do not like the Tribunal's criteria for determining the issues in leave-to-appeal applications, its approach to the access-to-file and employer-ordered medical examination questions, and often its findings on factual and medical issues.

Controversy has always been the hallmark of the workers' compensation field and it is not to be expected that an Appeals Tribunal that is doing its job would be immune. It is important, however, that the Tribunal eventually win the general respect of both employer and worker communities as an institution in which decisions are not governed by political or emotional considerations but are determined by an objective application of evidence governed by a true respect for the rule of law. It would, of course, be naive to suggest that we have yet reached that point in the eyes of either community. In this emotionally-charged, politics-dominated field of controversy where the debunking of reasoned analysis has been the tradition, and consequences and outcomes long the only acknowledged measure of acceptability, it will take a considerable period of consistent and persistent performance to compel that kind of respect.

I believe, however, that the Tribunal's performance to date in fact merits respect of that nature and I am confident that if we go on the way we have started, that goal will ultimately be achieved.

THE DETAILED REPORT

A. THE REPORTING PERIOD

The report covers the second, twelve-month period of the Tribunal's existence — from October 1, 1986, to September 30, 1987.

Reporting in respect of an institution's anniversary period is anomalous relative to the usual practice of reporting in respect of a fiscal period (April 1 to March 30). It was justified in the First Report for reasons having to do with the level of public interest in the new Tribunal's first 12 months of existence, and it was my intention to revert in this Second Report to fiscal-period reporting. That shift in the reporting period did not, however, prove either possible or desirable in the circumstances prevailing in March/April of 1987 and in this report I have reverted again to reporting in respect of the Tribunal's anniversary period.

B. CHANGES IN THE ROSTER OF MEMBERS

In the reporting period, a number of changes occurred in the roster of Vice-Chairmen and employer and worker Members. In addition to the normal turnover that is to be expected in any 12-month period, there were a number of special developments. In the first place, we were able to fill the vacancy in the full-time worker Member complement reported in the First Report. Maurice Robillard was appointed in March 1987. He came to the Tribunal from his position as International Representative of the Amalgamated Clothing and Textile Workers' Union of America. His appointment finally provided us with a worker Member fluent in the French language. With Mr. Robillard's arrival, the Tribunal was able for the first time to field a complete French-language Hearing Panel.

Also in March 1987, six, new, part-time Vice-Chairmen were appointed. These appointments became necessary because the utilization rate for part-time Vice-Chairmen turned out to be lower than expected, and the delays in the decision-making process had indicated additional decision-writing resources were required.

In the 1986/87 Tribunal Budget, provision had been made for two additional full-time Vice-Chairmen positions. At budget time it had not been absolutely clear that two additional Vice-Chairmen would in fact be needed but the possibility was clearly apparent. Accordingly, budget provision was made on the understanding that we would continue to vet the situation and move to fill the positions only when the need became clear. One of these positions was filled in August 1987, and at the end of this reporting period a recommendation for the filling of the second position had been made and the appointment was pending.

The filling of the first new position was the occasion for a major internal staff adjustment when Maureen Kenny, who had been the Counsel to the Chairman since the Tribunal's inception, accepted the appointment. By the end of the reporting period, her successor had not yet been selected.

In *Appendix A* (Green) to this report, the reader will find a list of all Tribunal Vice-Chairmen and Members who served in that capacity during the reporting period.

C. THE RELATIONSHIP WITH THE BOARD

1. Introduction

The establishment and maintenance of an appropriate relationship between the Tribunal and the Board is of central importance to the long-term interests of the workers' compensation system in Ontario. As two components of the same system, the Tribunal and Board must have a working relationship which effectively serves the goals and needs of the system.

Since one of the fundamental characteristics of the system design is now a final appeal to an external, independent tribunal, the continued independence of the Appeals Tribunal must be one of the cornerstones of the relationship.

That independence has to be maintained, however, in the context of a relationship which other aspects and needs of the system require to be highly co-operative at an operational level. Furthermore, in a system that is designed to be bureaucratic rather than litigious in nature, ways must be found to maintain this independence without fostering an adversarial environment.

In my view, the working out of this relationship is perhaps the most difficult challenge faced by the Board and the Tribunal as they attempt to implement the 1985 amendments.

In the 12 months covered by the reporting period, there have been a number of occasions for both the Board and the Tribunal to speak to the nature of this relationship, and continual interaction at an operational level has

produced a growing set of precedents of co-operation and interaction. I believe this subject to be of sufficient importance to warrant devoting considerable space in this report to an account of that experience.

2. Concern for the Relationship is Mutual

It is important to recognise at the outset that, overall, the relationship between the Board and the Tribunal has been very positive throughout the Tribunal's short life. It is apparent that the Board has been as concerned as the Tribunal to see the specifics of this relationship developed as carefully and constructively as possible.

3. The Tribunal's View of the Relationship

In the Fall of 1986, the Board asked the Tribunal to reconsider the Tribunal's *Decision No. 72* in the light of the subsequent Ontario Court of Appeal decision in *Kuntz and Dagenais*. This was the first such request the Tribunal had received and it required the Tribunal to address various aspects of the relationship between itself and the Board. The views expressed in that decision (*Decision No. 72R*) are of particular interest on this subject of the Tribunal-Board relationship.

In the first place, the Tribunal's Hearing Panel in that case recognized the appropriateness of the Board's initiative in attempting to discover whether or not the Tribunal might change its mind on *Decision No. 72* in light of the Court of Appeal decision, before the Board resorted to the section 86n review procedures. The proceedings under section 86n involve a large volunteer board of directors with a heavy management agenda and are inherently difficult and cumbersome. It was a correct approach, in the Tribunal's Panel's respectful view, for the Board to be concerned not to invoke that procedure wherever it can be properly avoided. Furthermore, the procedure of asking the Tribunal to reconsider its decision in the light of the Court of Appeal decision had the additional advantage of avoiding having the board of directors deal with the issue under its section 86n procedures without the benefit of the Appeals Tribunal's views as to the implications of the Court of Appeal decision.

The 72R Panel accepted the worker community's submissions that the Board ought not to be seen to have any standing to *cause* a reconsideration of any Tribunal decision to be taken other than through the 86n procedures, but insisted on the Tribunal's right to invite participation from whomever might reasonably assist the Tribunal in its proceedings and to define the nature of that participation as it thinks helpful. It acknowledged the fact that in many cases the Tribunal would be unable to meet its own obligations without the Workers' Compensation Board providing it with information about the Board's policies and practices.

The Panel noted a distinction between the Board participating in the Tribunal's proceedings for purposes of providing information, and the Board participating in those proceedings for the purpose of *advocating* a particular point of view with respect to issues of general policy or law. The worker community argued that the Board ought not to appear in an advocacy role before the Tribunal. Such a role for the Board was said to be incompatible with the principle of an independent Tribunal and also, given the section 86n review procedure, it put the Board in the position of advocating a point of view before the Tribunal in the circumstance where if it lost the argument at the Tribunal it might then review and itself decide the same issue on a section 86n review of the Tribunal's decision. In those circumstances, the Board would in effect be seen to be advocating a position in the first instance and adjudicating it in the second.

The Panel was concerned, however, that if the Tribunal's hearing panels were prevented from hearing informed advocacy in support of the views of the Board's administrators on issues concerning general policy or law, the likelihood of a hearing panel in a particular case failing to understand some significant element of the Board's policy, guidelines or practices, or failing in its reasons to deal effectively with significant concerns of the Board's administrators would be greatly increased. It noted that Appeals Tribunal's decisions which were deficient in that respect presented a problem. In a particular case, such a decision would be substantially less helpful to the board of directors in its section 86n consideration of the issues than would otherwise be true, and from a broader perspective the board of directors general impression of the credibility and reliability of the Appeals Tribunal's views on such issues would be generally undermined by decisions deficient in that respect. For the section 86n process to work the way it was intended it was essential, in the Tribunal Panel's view, that with respect to issues concerning policy and general law, Tribunal decisions address the views and concerns of the Board's administrators in a knowledgeable and insightful manner. Since the Tribunal's ability to do that would be substantially hampered if it were prevented from hearing informed advocacy of those views, the Panel concluded that the Tribunal must consider itself free to continue to invite the Board to contribute to the Appeals Tribunal's hearings not only by providing information but also in appropriate cases by making advocacy-style submissions.

While the 72R Panel found that the Board had no standing to cause the Tribunal to reconsider any decision (apart from the Board's 86n powers), it indicated that the Tribunal ought to issue a standing invitation to the Board to inform the Tribunal of what it regarded as obvious deficiencies in any of the Tribunal's published decisions. It would then be up to the Tribunal as to whether such information was so significant as to warrant the Tribunal itself initiating a review.

Communications of that nature are now on occasion being received from the Board — usually by letter addressed to the Tribunal's General Counsel. They generally bring to the Counsel's attention matters of importance at the level of principle which the Board's staff believes from its reading of a decision the hearing panel in the case may have simply overlooked. These communications are reviewed by the General Counsel and by the Tribunal Chairman and if they are seen to raise appropriate matters of potential substance the Chairman will consult with the hearing panel who decided the case. If it appears to the Panel that the Board's point is substantial, then the parties to the proceedings will be sent a copy of the Board's letter and asked to make submissions on the question of whether the Board's concerns are such as to justify the Tribunal re-opening the decision and embarking on a reconsideration, having regard for the Tribunal's usual criteria in that respect (see below). To date, these communications from the Board have been infrequent and up to the end of the reporting period none had yet progressed to the point where they had in fact triggered a reconsideration in any particular case.

In an effort to minimize the times when the Tribunal decides a case in ignorance of relevant information which the Board could have provided, and to ensure that its hearing panels understand the concerns and perspectives of the Board's staff when the panels are deciding an issue of generic interest, the Tribunal on its part engages in its own communication initiatives. When the potential implications of the case in that regard are understood prior to the hearing, the Board is invited to make submissions at the hearing, and when the implications are first appreciated at the post-hearing stage, the issue is then put to the Board's staff and they are invited to make post-hearing submissions to the hearing panel. Submissions at the latter stage are in writing. In either situation, the Tribunal's communications with the Board is in writing with copies of the letters to the parties in the case. The parties are provided with ample opportunity to respond to the Board's submissions.

In addition to the above communications there is almost daily traffic between the Tribunal's General Counsel and his office and the Board's General Counsel and her office addressed both to the sorting out of the logistics of file transfers and the like, and to a sharing of developing concerns of a generic nature. A current instance of the latter type of exchange is the discussions which have been going on through that channel as to the implications of the Board's new chronic pain policy for the Tribunal's jurisdiction with respect to the pension appeals that had been on hold pending *Decision No. 915,* and as to the procedures the Board is proposing to adopt in respect to cases referred back for review under that new policy.

With respect to the foregoing exchanges between the Board's and the Tribunal's staffs, it is important to appreciate that it has been explicitly understood from the beginning that the Tribunal is unable as an institution to make any agreement with the Board that is effective to bind any interest of the parties to any case. The Tribunal's powers to make decisions on substantive issues can, in the ordinary course, only be exercised by a hearing panel in the context of deciding a particular case. A hearing panel's powers in that respect cannot be constrained by any previous institutional agreements in respect of such issues between the Tribunal and the Board.

A major determinant of the nature of the relationship between the Board and the Tribunal is the Tribunal's view as to the standard of review by which it is governed when it considers appeals from the Board's decisions. In many of its decisions the Tribunal has considered expressly the standard of review. For an appeal to be successful is it enough that a Tribunal hearing panel find the Board's decisions to be merely wrong? Or, are the Board's decisions owed some deference such, perhaps, as that showed generally to decisions of administrative tribunals by the courts? Might the Board's decisions have to be patently unreasonable before the Tribunal is entitled to interfere?

To date, the Tribunal's decisions have generally held that deference is not owed; that the question the statute obligates the Tribunal to answer is, is the Board's decision *correct* — does it reflect a correct view of the facts in the case? Is it in accordance with the Act? It seems likely, however, that there are limits to this general rule and these continue to be explored.

4. The Line between the Board's Business and the Tribunal's Business — Section 86g(2)

The essential nature of the formal relationship hinges also, of course, to a significant degree, on how section 86g(2) — the section which specifies the circumstances under which the Tribunal's right to intervene in the Board's decisions arises — is interpreted. The section reads as follows:

> **86g(2)** The Appeals Tribunal shall not hear, determine or dispose of an appeal from a decision, order or ruling of the Board unless the procedures established by the Board for consideration of issues respecting the matters mentioned in clause (1)(b) or (c) have been exhausted, and the Board has made a final decision, order or ruling thereon.

This section's straightforward appearance belies the difficulty of its application. The Tribunal's *Decision No. 3* is a case which provides a particularly illuminating example of that difficulty as well as a comprehensive exposition of the Tribunal's current approach to sorting out when it is appropriate for it to act and when it must refer matters back to the Board.

The appropriate passages read as follows:

> At the outset of the hearing in this case, the employer questioned whether the Tribunal had the jurisdiction to hear and determine the issue as to whether there was entitlement for compensation for any injury arising out of a stroke. The point the employer made was that because the Workers' Compensation Board's Appeals Adjudicator had decided that the injury was caused by a disc problem, the Board never had occasion to consider what the effect would be on the worker's compensation rights if the injury were seen to be caused not by a disc problem but by a stroke. The employer argued, therefore, that this was a case where it could not be said that the Board's procedures for consideration of the issue of entitlement to compensation for injury caused by a stroke had been exhausted. Accordingly, under the terms of section 86g(2), the Appeals Tribunal was prohibited from considering that issue and should, instead, send it back to the Board for initial determination.
>
> The Appeals Tribunal's approach to its jurisdiction to set issues and its reading of the limitations imposed by section 86g(2) is set out in the Pension Assessment Appeals Leading Case Interim Report (section E). This Panel is satisfied that the principles and considerations in that decision are appropriate for consideration of the jurisdictional issues raised by the employer in this case.
>
> Section 86g(2) sets up limits to the Appeals Tribunal's jurisdiction which differ depending on how one chooses to characterize the issue or issues determined by an Appeals Adjudicator's decision. For example, the employer says that what the Appeals Adjudicator decided in this case was that the left arm injury was caused by the disc protrusion; the disc protrusion was caused by the accident, and, accordingly, compensation followed. One can, however, just as validly characterize the decision as: "the worker's disability resulted from a compensable accident". In the former case, the employer can argue, as he in fact does, that if on appeal to the Tribunal it now appears that the left-arm injury was not caused by the disc protrusion but by something else — in this case a stroke — it becomes apparent that the Board has not had an opportunity to consider with respect to this other medical cause whether it was caused by the accident, and if it was, whether it was compensable.
>
> In fact, if the employer's argument were to succeed in this respect, he would also have established that the Tribunal had no jurisdiction to determine whether a stroke had occurred. The stroke theory was not put forward at any point during the Board's procedures — it surfaced for the first time in this Appeal. Thus the stroke issue is also an issue in respect of which it can be said that the Board's procedures have not been exhausted, and which, therefore, should be referred to the Board for initial determination.
>
> To accept the employer's appreciation of the intent of section 86g(2) would be to set up the following scenario. The case is sent back to the Board on the stroke issue. The Board decides there was no stroke. The employer appeals. The Appeals Tribunal decides there was a stroke. The case is sent back for the Board to consider whether the stroke resulted from the accident (the Board would not have had reason to consider that issue because it had concluded there was no stroke). The Board says, no, the stroke did not result from the accident. The worker appeals. The Appeal Tribunal says, yes the stroke did result from the accident. The matter then goes back to the Board to decide whether a disability caused by a stroke resulting from an industrial accident is compensable. The Board says yes it is. The employer appeals. . . .
>
> This is a scenario from the theatre of the absurd and it comes to life once you accept that 86g(2) is intended to refer to all the various sub-sets of issues underlying any major question.
>
> If, however, you characterize the issue decided by the Board in the broad terms previously mentioned — i.e., "Did the worker's disability result from a compensable accident?" — then the ping-pong process is avoided. Obviously, if that is the issue before us, on that issue the Board has exhausted its procedures and made a final decision.
>
> There is nothing in the wording of the section 86g(2) which requires, for purposes of the section, issues to be characterized in terms of the major substantive issue or the sets of sub-issues underlying the major issue. The choice appears to be open.
>
> It will appear from [the Leading Case Interim Report referred to above] that the Tribunal has opted for a practical approach to this question. In the ordinary course, in the interest of avoiding the ping-pong scenario, it will for the purposes of 86g(2) characterize the issue that had been before the Board in the broadest possible terms. However, where a sub-issue arises — often as a result of a Tribunal decision on some other issue — which is known to be novel

or contentious and which the Board has clearly not had an opportunity to consider, the Appeals Tribunal will abide by the obvious spirit of 86g(2) and refer that issue back to the Board for prior determination.

The list of the principles and considerations which should apply in determining the Tribunal's jurisdiction, which were set out in the Tribunal's Pension Assessment Appeals Leading Case Interim Report and referred to in the above passage, were included in Appendix E to the Tribunal's First Report. Since they are not too long, in the interest of completeness the especially pertinent portions are repeated here.

11. The general purpose of Section 86g(2) is clear. The legislature obviously wants to ensure that the WCB's special expertise, experience and policy perspective is allowed its usual and proper role before the Appeals Tribunal becomes involved. It is equally clear, however, that the legislature cannot be taken to have intended to require a multiplicity of proceedings to no practical purpose.
12. Having regard to the foregoing factors, in selecting in any particular appeal the issues it will hear and determine the Appeals Tribunal intends to be governed by the following criteria:
    a) The parties' views as to the issues the Tribunal should address will be given great weight and only for substantial reasons will they not be followed.
    b) The set of issues that were explicitly or implicitly "present" in the adjudicator's decision are the starting point of any issue identification process, and the deletion or addition of issues from that basic set will require substantial reasons.
    c) In the interest of efficiency and speed, a case should not be complicated by the Tribunal's addition of issues unless there is a clear necessity.
    d) The Tribunal's bottom-line question in selecting issues is, What issues is it essential to consider in determining the true merits and justice of this case having proper regard for all competing interests?
    e) Where an issue arises and it is apparent that the WCB has special expertise, experience, or a policy perspective in respect of that issue, which in the proceedings to date have not had their appropriate play, the Tribunal must refer that issue back to the Board for determination in its usual processes.
    (f) In considering an application of the policy in the preceding paragraph, the Tribunal must also have appropriate regard for the competing policy of not prolonging the WCB-Appeals Tribunal decision-making process to no practical purpose.

5. How the Board Sees the Relationship — the Application of 86n

An issue of special interest concerning the relationship between the Tribunal and the Board is how the Board's own ongoing operations are in fact affected by decisions of the Tribunal which are inconsistent with the Board's existing policies or practices. The Board's position in this respect, as stated to the Legislature's Standing Committee on Resources Development and elsewhere is that the Board considers itself generally obligated to adopt the Tribunal's view of such matters unless it decides to review the decision under the provisions of section 86n. The Board has made it clear, however, that before it adopts a change in its policies or practices in accordance with a Tribunal decision (or before it embarks on an 86n review) there will usually be a period of review following receipt of the decision during which the Board will study the merits of the Tribunal's position. During this period of review, the Board's current practice or procedure will continue to be applied as before.

The Board has established a staff committee with the responsibility for carefully reviewing all Tribunal decisions as they are received, and for recommending to the Board Chairman what steps, if any, should be taken in respect of each decision and in particular whether it is a candidate for referral to the board of directors for possible review under section 86n. This committee reports monthly. Its detailed report, which includes a summary and an analysis of each Tribunal decision issued in the month covered by the report, is routinely provided to each member of the board of directors. The distribution list includes, of course, the Chairman of the Appeals Tribunal who is an *ex officio* member of the board of directors.

It is obvious from the staff committee's report that the committee not infrequently encounters Tribunal decisions which are inconsistent with established Board policy or practice — or with the Board's medical staff's established views — but in which there is sufficient potential merit that it is not possible for the committee to decide what recommendation to make to the Chairman on the 86n review issue without further study. Indeed, if the Tribunal is doing its job, a high percentage of the conflicting decisions should present the Board's staff with that type of problem.

This category of case is currently being referred to the appropriate section of the Board's organization for a policy review, and the decision as to what to recommend to the Chairman and the board of directors in respect of the issues in such cases is being postponed pending completion of that review. In the meantime, the specific decision is usually implemented.

The practice of implementing the specific decision notwithstanding that the Board's staff has found within that decision a conflict with established Board policies or practices of sufficient importance to warrant a policy review, reflects the emerging Board view as to the restricted purposes to which the section 86n powers should be put. This is a view which is of very considerable general interest.

The theory, as I understand it, is that the section 86n powers of review are to be involved only for the purpose of ultimately resolving differences of principle between the Tribunal and the Board and not for the purpose of ensuring that the Tribunal gets everything right in every individual case.

This is a view as to the application of section 86n to which there appears to me to be no practical alternative when one considers the realities of the Tribunal-Board situation and the nature of the 86n process.

In the first place, the Tribunal is likely to be issuing about 110 to 140 decisions a month, on average. These will be decided by hearing panels involving any one of approximately 20 different individual Vice-Chairs and about the same number of worker and employer Members respectively. Any of these decisions may contain an interpretation of first impression of some section of the Act or of some part of the Board's policies or Guidelines on which the Tribunal has not previously expressed a view. But one decision on a novel point does not establish a firm *Tribunal* position on a point of principle. And for the Board to invoke 86n every time a decision issues which is inconsistent with a board policy or with an established Board view of the meaning of the Act would involve the commitment of the board of directors' limited resources to the cumbersome 86n procedures many times a month and in respect of issues on which it will not yet be clear what the final Tribunal position is.

Furthermore, issues of policy and general law which the 86n procedures are designed to address are frequently multi-dimensional issues. And it will be rare for one decision of the Tribunal to provide a sufficient indication of the Tribunal's position with respect to the various aspects of such an issue to make a board of directors' review of such a matter fruitful.

In my view, the intervention by the board of directors, before the Tribunal's position on a new issue has been allowed to develop over the course of a number of decisions, is likely in the nature of things to be premature and, therefore, less useful and possibly disruptive.

This view of the section 86n procedures as a means for the ultimate sorting out of intractable and well-defined differences concerning major matters of principle only, involves acceptance of the fact that while the Board's policy reviews are proceeding and the right moment for an 86n review is being allowed to develop, numbers of individual Tribunal decisions which ultimately may prove to be inconsistent with the position finally established through an 86n process, will have been implemented. This appears to be a price that has to be paid if the process for resolving major differences between the Tribunal and the Board is to be allowed to proceed in a rational manner. What is to be done with these cases subsequently, is a question for the Board's policies concerning retroactivity or the collection of over-payments or, perhaps, for its S.I.E.F. policies.

The point at which worker and employer representatives encounter the Board's attitude to Tribunal decisions in its most practical form is when they attempt to cite Tribunal decisions to Board claims adjudicators or Hearings Officers as precedents to be followed in current cases in which they are appearing. The Board's instructions to its adjudicators and to its Hearing Officers is that Tribunal decisions are not to be regarded by them as overriding existing Board policies. When the cases being cited are cases which have not been reviewed or which are not under review in 86n proceedings, this policy gives the appearance of the Board ignoring the precedent value of the Tribunal's decisions. However, it is apparent that this policy in fact reflects a practice dictated by administrative necessities which ultimately is consistent with the Board's stated commitment to being guided by Tribunal decisions if they are not reviewed under section 86n.

Because of the restricted use to which section 86n can be put for the reasons referred to above, there will always be numbers of Tribunal decisions which have not been referred for a section 86n review but which are the subject of policy reviews by the Board — cases in which the Board has not accepted the policy implications of the Tribunal's decision but is in the midst of the sometimes-prolonged process of studying the issue with a view to deciding whether to recommend an 86n review or a change in Board policy. In these circumstances, acceptance by the Board of the proposition that decisions of the Tribunal which have not been subjected to the 86n processes are automatically precedents which claims adjudicators and Hearings Officers should follow, would effectively short-circuit the 86n process.

It is apparent that the Act does not contemplate, and in the long run the system could not tolerate, a situation in which the Board habitually applied policies or interpretations of the Act which were inconsistent with established Tribunal positions which it had failed to review under the 86n process. Both the Board and the Tribunal agree with

that proposition. It is, however, a practical impossibility for the Board's and the Tribunal's respective positions on general law and policy questions to be continuously fully reconciled on a case-by-case basis. As the differences emerge, there must be a rational process of reconciliation which in the nature of things will often require some considerable time. In the end, such reconciliation can only be accommodated by one of three things: a Tribunal-initiated change in its position; an 86n review; or a board of directors' decision to adopt a change of policy or interpretation that will bring the Board's position into line with the Tribunal's position.

6. Who Has the Ultimate Say?

The question which will determine the most significant aspect of the Board — Tribunal relationship has, of course, yet to be addressed — the question of who ultimately has the last say. The answer to this question is to be found in the interpretation of section 86n(1), particularly of the following words:

> . . . the board of directors of the Board may in its discretion review and determine the issue of interpretation of the policy and general law of this Act and may direct the Appeals Tribunal to reconsider the matter in the light of the determination of the Board of Directors.

The Tribunal is aware that views differ as to whether or not these words leave the Tribunal any room for further independent action once the board of directors has made its determination and issued its direction. The interpretation of this section in this respect falls to be determined, at least in the first instance, by the Appeals Tribunal itself. This will occur when the Tribunal receives a direction from the board of directors under this section. As of the end of the reporting period, no directions had yet been received.

The Tribunal's decision as to the meaning of these words will be made by a hearing panel assigned to determine the effect of a board directive in a particular case. The decision will follow a hearing on the matter in which the worker and employer in the case will have been titled to make submissions. It is, therefore, clearly inappropriate for the Tribunal to come to a prior, institutional view on the matter. Furthermore, the meaning of these words can best be determined through their application to the particular circumstances of concrete cases. Accordingly, until occasions for such decisions arise, the system must continue to live with some uncertainty concerning the method by which intractable differences between the Tribunal and the Board are to be finally resolved.

7. The Tribunal Chairman's Role as Member of the WCB Board of Directors

The other significant element in the structuring of the Board-Tribunal relationship to which reference has so far not been made is the Statute's designation of the Tribunal Chairman as an *ex officio,* non-voting member of the Board's board of directors.

This arrangement is perhaps unique in the annals of administrative law experience. It is especially peculiar in its deliberate creation of a role for the Tribunal Chairman which is inherently fraught with conflicts of interest.

The Board's policies and its interpretations of the Act are, in all major matters, ultimately approved by the board of directors. Many of these decisions — all of them potentially — ultimately come to the Tribunal for review, and, in the natural order of things, often for a review conducted by a Tribunal hearing panel chaired personally by the Tribunal Chairman.

While the Tribunal Chairman's role on the board of directors is that of a non-voting member, presumably the statute did not intend the role to be insubstantial. Accordingly, the statute must be seen to contemplate the Tribunal Chairman participating fully in the board's discussion of issues and having the same access to Board information as is available to any other member of the board of directors.

By the end of the reporting period, the board of directors and I have had two years of experience with this unique relationship and some tentative conclusions about the viability and usefulness of the role may now be drawn. Necessarily, of course, the conclusions as they appear here reflect only my own impressions of how the arrangement has worked and of the complications and difficulties it has presented.

Except for a small number of absences attributable to conflicting schedules, I have attended all of the board of directors' regular meetings since the new board met together for the first time. I have deliberately absented myself from the board hearings of the section 86(n) review of *Decision No. 72* and from any discussion of the decisions which the board of directors is to make pursuant to that review. I have also absented myself from discussions of certain agenda items during regular meetings from time to time. Typically, these absences occurred with respect to items involving issues which I knew at the time were already under explicit consideration by the Tribunal in cases then before it.

The occasions when I excused myself from the meetings while discussion was held on a particular agenda item occurred more frequently in the earlier months of the experience when nervousness about the conflict of interest aspect of the role was most acute. As the experience with the role developed, however, it became apparent that traditional responses to normal conflict concerns would effectively deprive the role of any substance. It would mean that the Chairman would be absent from the board meeting whenever his presence would be potentially significant.

Accordingly, in the latter months of the reporting period I absented myself infrequently and participated in board discussions and accessed Board information with respect to many matters in respect of which normal criteria for identifying undesirable conflict situations might have suggested a different course.

I have, to take one example, participated in board discussions of whether or not to exercise its right of review under section 86n in respect of particular Tribunal decisions. (In these discussions I have limited my contribution to the question of how the section is intended to be used from a systemic perspective and have refrained from defending the Tribunal's decision or discussing the merits.)

It is apparent that when the Legislature caused the Workers' Compensation Act to designate the Appeals Tribunal Chairman as a member of the WCB's board of directors it deliberately put the Chairman into a position of inescapable conflict of interest as that concept has traditionally been understood. The Legislature cannot, therefore, have intended that the proprieties of the Chairman's activities in the role would be judged against traditional conflict-of-interest principles. Neither can it have intended that the normal principles concerning bias —as they pertain to adjudicators—apply to the Tribunal Chairman in his role of a hearing-panel chairman in a way that would rule out his sitting personally on appeals by reason of his position as a member of the WCB board of directors or because of his participation in previous discussions in the course of performing that role. There is nothing to indicate that the Legislature did not intend the Tribunal Chairman to be active in both roles. Indeed, the indication is clearly to the contrary. The Legislature must therefore not have intended that the nature of the one role would restrict and constrain the Chairman's activities in the other.

There is no doubt that the statutory appointment of the Appeals Tribunal Chairman to the WCB board of directors plays hob with traditional ways of looking at things in our legal system. It would seem, however, that this is in fact what the statute intended.

It is my own view that the Tribunal Chairman's position as a member of the board of directors has in fact turned out to constitute an essential link between the Board and the Tribunal. My participation in the discussions and deliberations of the board of directors on the full range of the Board's business has contributed to my understanding of the context in which the Tribunal's decisions are being made and has enhanced my ability to understand the system implications of issues the Tribunal is called upon to decide. This, in my view, is essential input to the body of background knowledge which the Appeals Tribunal must have if it is to fulfill its role as a specialized tribunal, in a field also occupied by the Board.

The existence of this channel of information between the Tribunal and the Board is inherently worrisome from the point of view of the principle to which the Tribunal is otherwise committed — i.e., that hearing panels are not to have information which has not been made available to the parties. It is, therefore, important to make the point in this regard that this channel of information is not being used, nor should it be used for the purpose of obtaining from the Board specific information about individual cases. The knowledge gained through this channel is of a general nature and if there is ever an occasion for such information to be used in a particular case, the Tribunal would have to ensure that the information was indeed shared with the parties in that case. The information, however, is no different in this regard than the information which the Tribunal Chairman and other panel members acquire in the ordinary course from their personal general reading and from their daily exposure to the evidence and submissions in the range of cases in which they are involved in the course of their regular activities.

Of more subtle importance but not less significant are the opportunities the role provides for the Tribunal Chairman and the other members of the board of directors and the Board Chairman, President and other senior members of the Board's management to lay the foundations of personal confidence which are so helpful in the avoidance of misunderstandings in the relationship the statute has established between the Tribunal and the Board.

The Tribunal Chairman's position on the WCB board of directors has also made the board meetings into a forum in which the Board-Tribunal relationship can be discussed and problems and misunderstandings cleared up before they become entrenched. Thus, when problems with the relationship do arise, they arise in circumstances where both parties have a clear picture of the other's position and the relationship is not endangered by mere misunderstandings. The Tribunal Chairman's presence at board meetings has also helped to enforce continuing awareness in the minds of both institutions of their respective roles as complimentary components of the same system.

The danger inherent in the arrangement is, of course, obvious. It is that the Tribunal Chairman will be co-opted by his involvement in the business of the Board and by the personal relationships that such an association promotes, and that he, and thus the Tribunal, will thereby lose the capacity — or possibly only the thirst — for the independent and objective review of the Board's decisions which the Act contemplates.

There are, however, two safeguards in this respect which, in my view, make the risk a reasonable one from a system perspective given the important advantages. The reference here is to the fact that the board of directors is a representative board with members representative of both the employer and worker communities (as well as of the public and the medical profession) and the Tribunal is a tripartite Tribunal with members representative of both

workers and employers. Thus the Tribunal Chairman's activities at the meetings of the board of directors are carried on under the supervision, as it were, of the employer and worker Members. And his activities and attitudes at the Tribunal are subject to the influence of a tripartite process quite capable of challenging a Chairman thought to be too much in the Board's pocket on any particular issue.

The role is often difficult and there are obvious dangers. However, based on the experience to date, it is my opinion that the role has proven, on balance, to be a workable and important component of the total system design.

D. THE RELATIONSHIP WITH THE GOVERNMENT

As reported in the *First Report,* the Appeals Tribunal has been categorized by the Government as a Schedule I (anomalous) Agency. The relationship is governed by a Memorandum of Understanding between the Minister of Labour and the Chairman of the Tribunal which is approved by Management Board of Cabinet. At the end of the reporting period, this memorandum was still in the approval process, but at the time of writing, approval has been received. A copy of the agreement is enclosed as Appendix B (Yellow).

E. THE RELATIONSHIP WITH THE OMBUDSMAN

The Ontario Ombudsman has always been heavily involved with complaints concerning workers' compensation matters. His reports are acknowledged to have played an important role in the reform movement which culminated in the Bill 101 amendments to the Act. This Tribunal's relationship with the Ombudsman is, therefore, of special interest.

Up to the end of the reporting period the Tribunal has been advised of 51 complaints received by the Ombudsman in respect of decisions of the Tribunal. The Ombudsman has reported in respect of 11 of these and has concluded in each case that the Tribunal's decision was not unreasonable.

The working relationship between the two organizations has been marked by a high degree of co-operation combined with an open exchange of views. The Ombudsman's organization will be aware, however, that I continue to believe that the Ombudsman's review of the *merits* of Tribunal decisions — as distinguished from its procedures and process — is, from a system perspective, inappropriate, although — in the light of the results of the Ontario Labour Relations Board's recent court challenge — now, apparently, clearly within his statutory authority.

F. THE SIX-MONTH TURNAROUND GOAL REVISITED AGAIN

At the time the Tribunal came into existence, I stated that it was the Tribunal's intention to work towards the goal of dealing with all but exceptional cases — from notice of appeal to the issuing of the decision — in not more than six months. In its Workers' Compensation Board Report dated November 1985, the Legislature's Standing Committee on Resources Development criticized that goal and recommended that it be reduced. In my first report, a year ago, that recommendation was addressed and I concluded that while for some categories of Tribunal cases a turnaround goal of less than six months was both desirable and practical, cases involving entitlement or quantum issues could not typically be dealt with appropriately in less than six months. Further experience now suggests that with respect to the latter category of cases even that assessment was unrealistic.

The six-month cycle anticipated four months of pre-hearing preparatory work. Now, after 12 months of experience operating at or near full production, it is apparent that the four-month estimate for the pre-hearing phase of the Tribunal's work reflected an insufficient appreciation at the time, of what in fact would be required for all of the pre-hearing activities. The Tribunal's current experience indicates that a more reasonable estimate would be five to six months from the notice of appeal to the hearing date.

Because this slippage in the anticipated turnaround time will be a matter of concern for many in the Tribunal's various constituencies, it is necessary to address the reasons for it in some detail.

PRE-HEARING PROCESS — ENTITLEMENT AND QUANTUM CASES

Stage	Time	Content
Intake Process:	3 weeks	1 week intake processing at the Tribunal and 2 weeks to requisition and receive a photocopy of the full Board file.
Tribunal Counsel Office Processing:	8 weeks	File review, issue identification, Case Description drafting, checking medical evidence, research of law, dealing with access to file question, etc.

Case Description Distribution:	2 weeks	Case Description out to parties and case on hold to give parties or their representatives an opportunity to study it and make suggestions.
Scheduling Process: (From receipt in the scheduling department to settlement date)	3 weeks	Contacting all interested parties and negotiating agreed date (telephone "tag" is a significant factor) or waiting for parties to request a date.
Usual period between settling the date of hearing and the date itself:	6-8 weeks	To accommodate representatives' schedules and to allow for parties to prepare for hearing.

The processing of cases through the Tribunal Counsel Office part of the cycle is under continuous review and it may ultimately prove possible to reduce the time by some margin. However, I believe that the times indicated above for each of the pre-hearing activities are not generally unreasonable allotments having regard to the nature of those activities. It is also to be noted that a significant portion of the total time allotted has been set with the convenience of the parties and their representatives in mind.

In summary, while it is to be hoped that in the future the Tribunal will ultimately be able to reduce the pre-hearing cycle for entitlement and quantum cases to four or five months, the cycle is currently five to six months and, under prevailing circumstances, I believe that range to be both necessary and appropriate.

With respect to the two-month turnaround goal in the post-hearing phase of the Tribunal's activities, this is the area of the Tribunal's production which, as explained in the Chairman's Overview (see above) and in the extensive report below, the Tribunal has yet to bring under control whether the two-month target is in fact generally realistic remains to be seen.

Experience does indicate, however, that in complex cases involving issues of serious controversy, tripartite decision-making cannot be accomplished as a regular rule in two months. In cases of that type, three to four months is a more realistic goal. Currently, at least, the proportion of cases which fall into that category is high. Thus at this point in time, even with the process under appropriate control, the Tribunal would find it difficult to meet the two-month goal in a general way.

It is appreciated that the foregoing news is not what the Standing Committee and others want to hear. It is, however, the reality and must be reported as such. My colleagues and I continue to believe strongly that with respect to significant and difficult cases — a category which, as indicated, accounts currently for a high proportion of the Tribunal's caseload — it is not appropriate to treat speed of disposition as an overriding consideration.

G. THE TRIPARTITE FEATURE — A PROBLEM

As indicated in the Chairman's Overview, the Tribunal especially values its tripartite character and has strived to make that feature of its design work as effectively as possible. The Vice-Chairs, the employer and worker Members and I, all believe that effort to have been successful. The Tribunal's hearing and decision-making processes are carried on in an environment of mutual respect in which all points of view receive a careful hearing and considerable efforts are devoted to finding answers which accommodate the concerns of all members of a hearing panel.

The latter effort, it must be noted, does not reflect a commitment to unanimity as a value in and of itself. The Tribunal has always recognized the inappropriateness of sacrificing the rights of employers or workers in a ***negotiation*** amongst panel members directed to achieving a unanimous decision. The effort typically directed towards resolving the concerns of all three members of the hearing panel reflects rather the group's confidence that if one of its members is deeply concerned by the decision favoured initially by the majority, then there is likely to be something at the bottom of that concern which from the system's perspective merits the whole group's careful attention.

This genuine commitment to understanding and, if possible, resolving all members' concerns has contributed substantially to the length of the decision-making process but, in my view, has also played a prime role in ensuring the quality and relevance of the Tribunal's decision.

It is that commitment which, in my opinion, explains the surprisingly low percentage of cases in which dissenting opinions have been registered. (The percentage appears still to be below 5%.)

In a field as inherently contentious and emotion-laden as this one, the extremely high proportion of unanimous decisions is obviously remarkable. The problem is that it is so remarkable that it has led the worker and employer communities to question whether "their" members on the Tribunal are in fact doing the job they are supposed to be doing. That questioning is, in turn, pressuring the Tribunal's worker and employer Members to adopt more partisan postures. The communities' attitudes are thus threatening the true effectiveness of the tripartite design.

What makes the design work — what motivates the careful listening and honest efforts to understand and resolve

other members' concerns — is the confidence that concerns expressed are genuine; that when a colleague disagrees it is because he, himself, or she, herself, honestly sees the thing differently.

Were it to become apparent that a colleague's disagreements reflected mere advocacy or posturing for the purpose of manipulating panels towards preconceived partisan conclusions, or even if the environment were to change sufficiently so that one could no longer be confident that the concerns expressed by one's colleagues were necessarily genuine, then the responses to such concerns would, in their turn, become partisan and manipulative. Very shortly, neither of the representative members would be truly directing their minds to the actual merits of the issues, and shortly after that, the panel chairs would stop caring what their colleagues were saying. The caucus would thereby become nothing more than ritual, and the decision would be effectively made by the panel chair. At that point, the Tribunal's tripartite character will have gone the way of the tripartite character of most labour arbitration boards and become mainly a façade.

Both worker and employer communities — or at least their representative organizations — must appreciate the importance of the Tribunal members representative of their communities making decisions as they see them on their merits, without regard for the popular, partisan or political point of view. Having members with the courage and freedom to act in that manner is the only way that members representative of employers or workers will continue to play any meaningful role at the actual decision-making stage.

Such communities and their organizations must also appreciate that it will be common for their representative members, acting in that manner, to reach conclusions on individual issues or cases which differ from the views of their respective communities. The Tribunal's process of adjudication and the detailed bi-partisan information and arguments to which an adjudicator who is honestly considering a case is subjected in the course of such process will frequently lead to that result.

To attribute the high proportion of unanimous decisions to the representative members being co-opted by their association with the Tribunal, or to their not knowing enough or not being skilled enough at persuading their colleagues on the panel to their community's point of view and not caring enough to dissent, is to question the integrity of the representative members or to misunderstand their essential role.

The employer and worker Members of the Tribunal are, without exception, people with highly relevant and senior experience of the workplace. A perusal of the brief resumes in Appendix A will confirm that fact. To a dispassionate observer, the fact that such a group of individuals are *all* found regularly signing unanimous decisions that run contrary to the instinctive views of their respective communities (views they themselves would have held before being involved as adjudicators in the cases in question) would presumably suggest that exposure to bi-partisan arguments, access to all of the actual evidence, and the acceptance of a duty to try to view the issues objectively, very often lead men and women of integrity to conclusions opposite to what a partisan point of view would suggest must be correct.

It would be helpful to the work of the Tribunal if the worker and employer communities were more inclined to see unanimous decisions that run contrary to their interests, as evidence that there may be more to the other side of the argument than they have been prepared to concede, rather than as reasons for denigrating the motives, commitment or abilities of the Tribunal's representative members.

H. OPERATIONAL ASPECTS

1. Introduction

The Tribunal's adjudicative processes and its administrative organization and systems have, of course, during the second 12 months of its existence continued to be in a developmental phase. By the end of the reporting period, the Tribunal had experienced about 21 months in an operational mode, but only about 12 months at or near full production levels. The Tribunal did not begin to reach its production capacity until the Fall of 1986 when the second major group of Vice-Chair and Member appointments came on stream.

2. Administrative Highlights

(a) *The Computer*

In the First Report, the failure of the Tribunal's first computer system was reported and readers were advised that the development of a replacement system was under way. In the ensuing 12 months, considerable progress was made. A request for tender was developed, the tendering and evaluation process completed, and in June 1987, a contract was signed with Digital Electronics of Canada. By the end of the reporting period, the hardware had been delivered, terminals had been installed, and the process of putting the computer on-stream had begun.

The computer system selected is an office-wide integrated system utilizing centrally located mini-computers. The system supports word processing, office management systems such as electronic mail, calendars and other time management devices, and conferencing and case management.

The development of the case management system involves software customized to the special needs of the Tribunal. The Tribunal has found it necessary to involve most of its administrative staff in the process of defining the details of the case management computer protocol and has been surprised by the amount of staff time this process has required. By the end of the reporting period, for instance, we estimate about 650 person hours have so far been expended in just the formal meetings associated with this activity. It is also clear that an equal or greater number of hours will be necessary before the program is up and running. The present schedule calls for the case management system to be operational in the spring of 1988.

While the amount of staff resources required for the development of the case management system has been surprising, an important side effect is that the computer's needs in this respect have motivated a rigorous examination and refinement of the Tribunal's case management systems and procedures. The result is that the area of the Tribunal's organization and systems devoted to the management of the case flow is now especially tight and effective.

One area in which I am anticipating the computer will provide unique advantages is with respect to hearing panel caucuses and other forms of internal, Tribunal meetings. The computer's conferencing capacity may be expected to improve the efficiency of the internal meeting processes significantly and should make an important contribution to cutting back the time taken by the tripartite decision-making process.

(b) *The Committee System*

To improve tripartite input into the development of Tribunal administrative policies and to enlist additional management resources, the Tribunal has introduced an administrative committee system.

The committees currently consist of an Executive Committee; a Production Advisory Committee; a Tribunal Counsel Office, Practice and Procedures Committee; a Research, Publications and Library Committee; an Outreach and Training Committee; a French Language Services Committee; and a Finance and Administration Committee.

The membership of these committees typically includes Vice-Chairs, Members representative of employers and workers, and the Department Head with the primary administrative responsibility in the areas of the committee's mandate. Of particular interest is the fact that most of the committees are chaired by worker or employer Members.

The committees are responsible for approving and supervising policy developments in the area of their mandates. Department Heads report to the committees in that respect. Committee recommendations on policy matters are sent to the Executive Committee for comment and then to the Tribunal Assembly or Tribunal Chairman for final approval. (Whether final approval lies with the Chairman or the Tribunal Assembly depends on whether the subject matter falls within the Chairman's statutory prerogatives.)

Readers will not have encountered in the *First Report* any reference to the Tribunal "Assembly". This is the label now applied to the meeting of all Order-in-Council appointments and senior staff. It is typically held two or three times a month and is chaired by the Alternate Chairman. This meeting has figured prominently in the Tribunal's management processes from the beginning. It is the same meeting which has provided an ongoing forum for the review and discussion of substantive issues as well. The Assembly does not, it may be noted, make decisions on substantive, case-related issues.

The Executive Committee consists of one Vice-Chair, one worker Member, one employer Member, the Alternate Chairman, the Chairman and each of the Department Heads (General Counsel, General Manager, and the Director of Research and Publications). It is chaired by the Tribunal Chairman. It meets once a week and performs a co-ordinating role with respect to the other committees and a consultative role with respect to the Tribunal Chairman. The Executive Committee was established at the time the new committee system was introduced.

(c) *Staffing*

As of the end of the reporting period, the staff complement consisted of 66 regular staff, 22 contract staff, and 22 full-time Order-in-Council appointments.

The Tribunal also employs eight part-time Senior Medical Counsellors.

As will appear from the financial reports for the fiscal period ending March 30, 1987, the Tribunal continues to make extensive use of temporary help, and it is expected that this will continue until the computer is fully operational and the administrative and adjudicative processes have stabilized.

(d) *No-smoking Policy*

As of September 1, 1987, the Tribunal became a no-smoking work environment. The rule against smoking applies to all parts of the Tribunal's premises, including private offices, hearing rooms, reception areas, etc., and extends to parties and their representatives attending at the Tribunal.

The policy was developed by a staff committee and its implementation strategy included four-month advance notice of the implementation of the policy, and Tribunal subsidization of staff participation in programs designed to assist individuals to quit smoking.

As of the end of the reporting period, the policy had been in place for one month, and to date, there has been no indication of any resistance to the policy from any quarter.

3. The Tribunal Counsel Office

(a) *The Controversy Recedes*

The Tribunal's use of its own counsel in the preparation of cases and in the hearings themselves was initially regarded as an innovative step and was controversial in the Tribunal's early months. Over the course of the Tribunal's second year of existence, the controversy on this point seems to have largely disappeared as far as the Tribunal's public is concerned. It remains, however, a subject of continuing internal debate.

The disappearance of the subject from the public agenda may reflect the fact that the in-hearing appearances of Tribunal counsel have turned out to be relatively infrequent — currently, counsel appear in less than 20% of cases — and the difficult and especially controversial role of cross-questioning witnesses when testimony has not been adequately tested by others has been largely abandoned.

(b) *Cross-questioning of Witnesses*

The virtual abandonment by Tribunal counsel of the role of cross-questioning witnesses where questioning by party representatives has failed to test the testimony in areas of apparent weakness is a continuing subject for discussion within the Tribunal. At the present time, the role has been largely surrendered to the members of the hearing panel. While feedback from party representatives suggest that at least the representatives are more comfortable with the panel members rather than Tribunal counsel playing that role, the Tribunal Chairman, for one, has ongoing difficulty with the negative long-term implications for the adjudication process of panel members in effect accepting the responsibilities of an opposing counsel. This is an area of ongoing internal debate.

(c) *General Duties*

The Tribunal Counsel Office continues, of course, to be responsible for the development of the case descriptions — the initial sorting of the file, the selection of relevant documents, the summarizing of the cogent facts and the initial identification of the issues. The counsel provides generally the main point of contact between the parties and the Tribunal during the pre-hearing stages.

An increasingly important role for Tribunal counsel is the identification of potential questions concerning the sufficiency of the medical evidence in a file. That role is described in more detail in the section dealing with medical evidence.

Another responsibility of the Tribunal Counsel Office which is assuming more importance as the months go by is its duty to ensure that hearing panels are aware of particularly relevant previous decisions of other hearing panels and of the existence of conflicting previous decisions on any issue with which a panel is concerned. The goal is to maintain, as far as possible, consistency in the Tribunal's decisions so that, by and large, like facts will attract like results regardless of the particular panel the parties happen to draw.

(d) *The Future*

The role of the Tribunal Counsel Office and its procedures and process are still in a developmental phase, and there continue to be a range of views within the Tribunal as to what should be expected of Tribunal counsel and in particular as to how the counsel's role should relate to the Tribunal Members' role. Review and adjustment of the role is a part of the Tribunal's active planning agenda. There is no doubt, however, that the basic concept of the Tribunal having its own counsel is now accepted as an essential component of the Tribunal's design.

4. Case Direction Panels and Instruction Panels

The role of the Tribunal's Case Direction Panels in instructing Tribunal counsel deserves a word of further explanation. It is a role which, so far as I can recall, has not previously been described.

The institution of the Case Direction Panel originated in the early planning of the Tribunal's adjudication process. It is a tripartite panel of the Tribunal identical in format and membership to a Tribunal hearing panel. It is resorted to for the purpose of providing Tribunal counsel, and — where appropriate — the parties, with directions concerning the Tribunal's pre-hearing activities. These include investigations (medical and other), selection of relevant documents, pre-hearing identification of issues, and other matters of potential controversy at the pre-hearing stage. It was my view from the beginning that it was necessary that members of the Tribunal adjudicating a

particular case be isolated from the Tribunal's pre-hearing investigative and preparation activities in that case. Involvement of hearing panel members in the latter type of pre-hearing activities presents the danger of their developing a biased perspective and is contrary to the common law's traditions in that regard. A Case Direction Panel, composed of a Vice-Chairman and Worker and Employer Members of the Tribunal who are not involved in the adjudication of the case in question, is a device which permits the Tribunal to carry on its investigative role under appropriate tripartite Tribunal direction without jeopardizing its adjudicative role.

Where a Case Direction Panel is required for the purpose of giving pre-hearing directions on contentious issues, it was contemplated that the Panel's decision in that respect would be arrived at after considering submissions on the matter from interested parties — either written or oral as the circumstances indicated.

A role for Case Direction Panels which had not been originally contemplated, but which evolved early in the Tribunal's experience with the concept, was as a vehicle for private, Tribunal instructions to Tribunal counsel.

In their role as the Tribunal's representative, it is understood that Tribunal counsel cannot engage in any activity or take any step except pursuant to instructions from the Tribunal — the client. As in any counsel-client relationship, there are, of course, established instructions of a general nature — the limits of which are implicitly understood — which establish the Tribunal Counsel Office's basic mandate. It is the obligation of individual members of the Counsel Office's staff to be sensitive to the implicit limits of their general instructions and to seek supplementary particular instructions whenever they are contemplating a step or an activity which they cannot be confident is authorized by the general instructions.

The need for such special instructions arises routinely. One example is where counsel has come to the conclusion that significant, additional medical evidence is needed. Arranging for such evidence in a particular case is not activity within the ambit of a Tribunal counsel's general instructions. Accordingly, instructions in that regard must first be obtained from the Tribunal.

The need for these instructions to be private — i.e., obtained by a counsel's application to a Case Direction Panel without the involvement of the parties — arises because of logistical difficulties involved in inviting submissions from the parties in every such case when, in the majority of cases, the need for additional evidence will not be a matter of contention as far as the parties are concerned. The arrangement, therefore, is that counsel privately seeks instructions from a Case Direction Panel. If the instructions are issued, counsel then seeks the worker's co-operation and consent in this regard. If the worker or employer takes exception to such an initiative by counsel, the understanding is that the counsel then invites either party to take the issue to a Case Direction Panel (differently constituted) for further instructions. This latter application is one to which both parties would be privy and in respect of which submissions from the parties would be received.

Where Case Direction Panels are used by Tribunal counsel for the purpose of obtaining private instructions it would, in my view, be preferable to characterize them as "Instruction Panels", reserving the "Case Direction Panel" label for those occasions when the parties are involved in obtaining pre-hearing directions from the Tribunal.

Tribunal members involved in either type of panel continue to be barred from sitting on the hearing panel in the same case.

5. Outreach and Training

The Tribunal continues to recognize an institutional responsibility to assist the employer and worker communities in understanding the Tribunal's role and how things work at the Tribunal. The Chairman, Alternate Chairman, Vice-Chairmen, worker and employer Members, and staff, have all been receptive to invitations to speak to conferences and meetings or to participate in seminars and workshops. The frequency of this type of activity has been steady throughout the reporting period.

The distribution of written explanatory material continues to be a priority. By the end of the reporting period, the Tribunal had distributed (in either the English or French versions) 28,000 copies of its pamphlet entitled, *How to Appeal to the Workers' Compensation Appeals Tribunal.* It has also continued to publish a Newsletter in both French and English. Four issues were published during the reporting period. Also, as its practice and procedures have stabilized, the Tribunal has issued a series of *Practice Directions.* These, together with standard-form explanatory letters issued to the parties at various stages in the Tribunal's process, provide individual employers and workers with the "how to" information usually required.

The Tribunal also believes that it is in its institutional interest to do what it reasonably can to assist in the training of individuals who appear before the Tribunal as representatives of workers or employers. During the reporting period, the Outreach and Training Committee attempted to promote Tribunal participation in employer or worker organized training activities. Activity of this nature has been slow to develop, but as of the end of the reporting period the Tribunal was actively engaged in preparing for a full day training program for union, worker representatives which has been organized for early in October by the Canadian Auto Workers' Union. The plans

include a demonstration mock Tribunal hearing. The Office of the Employer Adviser has agreed to participate in this program through providing one of its staff in the role of employer representative.

The Tribunal is sensitive to the potential risks involved in the Tribunal participating with employer or worker organizations in training programs which in the natural order of things are designed to serve partisan goals. Care, however, is being taken to avoid any suggestion of partisan perspective in the Tribunal's approach in such programs, and all reasonable efforts will be taken to ensure that the Tribunal is involved in this type of activity as much on behalf of workers as it is on behalf of employers. In the Tribunal's view, the risks, such as they are, have to be run since at this stage in the Tribunal's development there is much that representatives of workers or employers need to know which only Tribunal Members and staff can offer.

The Tribunal's future plans in this area of training include periodic public training workshops organized and presented by the Tribunal itself.

6. Scheduling

At the end of the reporting period for the First Report, the Tribunal's strategy for arriving at hearing dates had progressed to the point where its scheduling department was establishing a mutually acceptable date through a process of prior consultation with the parties. This approach was coupled with a strict no-adjournment policy.

About mid-way through the second reporting period, it was recognized that the scheduling staff was spending an inordinate amount of time in the consultation process. Furthermore, to meet the Tribunal's hearing targets it was necessary for the scheduling staff to persuade parties' representatives to accept hearing dates they did not really find convenient. This procedure was not only time-consuming and stressful but it produced hearing dates to which one or more of the parties was not truly committed and thus put additional pressure on the Tribunal's no-adjournment policy.

The policy was, accordingly, changed. Now, when a case is ready for hearing from the Tribunal's perspective, the scheduling department contacts the parties and makes one, non-intrusive attempt to identify a mutually acceptable hearing date. If that effort is not productive — for whatever reason — then the parties are advised in writing of the Tribunal's willingness to set a hearing date and instructed to contact the Tribunal's scheduling department when they are ready. In the meantime, the case is put into a currently-non-schedulable category. If no initiative is taken by the parties, after a significant waiting period their representatives will be contacted again by the Tribunal.

In moving to this strategy, the Tribunal accepted that it would mean a reduced number of hearings in the short-term. Eventually, however, the number of hearing-ready cases waiting for scheduling would reach a critical mass large enough to routinely generate the number of hearing requests the Tribunal needs to meet its targets.

The strict, no-adjournment policy remains in force and it is the Tribunal's impression that the worker and employer representatives are gradually growing accustomed to it. The pay-off is apparent. Less than 10% of the Tribunal's hearing dates are postponed for any reason.

7. Out-of-Toronto Hearings

Through the second reporting period, the Tribunal's hearing panels continued to travel throughout the Province. At regular intervals, hearings are scheduled in Thunder Bay, Sudbury, Timmins, Ottawa, London and Windsor and have been held, in special circumstances, in other places as well. Twenty per cent of all cases heard during the reporting period were heard at out-of-Toronto locations.

8. Maintaining Uniform Standards and Consistency in Tribunal Decisions

In the 18 operational months up to the end of this reporting period the Tribunal had decided and issued one thousand, two hundred and two final decisions, employing for this purpose a total of 60 different adjudicators, sitting in panels of three. The Tribunal Chairman was the Panel Chairman in 32 cases. The balance of the hearings were chaired by 9 full-time and 19 part-time Vice-Chairs. The other members of the hearing panels consisted of 6 full-time and 7 part-time employer members and 6 full-time and 11 part-time worker members.

As indicated previously, the Tribunal is unique at this stage of its life in the high proportion of cases in which it finds itself dealing with seminal issues.

The special importance of maintaining consistency in the Tribunal's decisions and the inherent difficulty in these circumstances of achieving that goal are obvious. The Tribunal has continued to pursue the strategies in this regard described in the First Report. These include training and orientation of newly appointed Vice-Chairmen and members; continuing programs of education and discussion of emerging issues within the Tribunal generally; the activities of the Tribunal Counsel Office as previously described, and the Office of the Chairman's system for reviewing all decisions at the draft stage.

The last device, which is described in some detail in the *First Report* (page 14 and 15), is, of course, inherently

controversial from an administrative law perspective. Nevertheless, after 18 months' experience with the procedure, the Tribunal is satisfied that it does not interfere with the autonomy and independence of the hearing panels, Vice-Chairmen and Member support for the procedure is virtually unanimous, and all concerned find it impossible to imagine how, given its operational circumstances, the Tribunal could have managed without this procedure.

9. Medical Evidence

(a) *Medical Assessors and Medical Counsellors*

Section 86h of the Act provides for the establishment, through appointment by Order-in-Council, of what the statute's marginal notes refer to as a "Panel of Medical Practitioners." It is the doctors on this "panel" to whom the Tribunal may send a worker for further medical examination.

In fact, the marginal note's characterization of these doctors as a "panel" is misleading. The Act does not contemplate the doctors acting together as a panel in any respect. It is also clear that they are not intended to have any decision-making capacity. A more accurate collective description of this group of Order-in-Council appointed doctors would be that of a "roster".

For the practitioners on its 86h roster the Tribunal has also adopted the label "Medical Assessors". This label reflects generally what the Tribunal understands their intended role to be and serves, as well, to distinguish this set of doctors from the Tribunal's own "Medical Counsellors."

The Tribunal's Medical Counsellors are a group of senior specialists who have accepted part-time employment with the Tribunal and serve as wise counsel to the Tribunal in the medical area generally. Unlike the medical assessors, however, they do not examine workers nor do they give evidence or otherwise communicate with hearing panels in individual cases.

During the reporting period, the Medical Counsellors have continued to be co-ordinated by **Dr. Brian Holmes,** currently Acting Radiologist-in-Chief of the Toronto General Hospital, and formerly Professor and Chairman, Department of Radiology, Faculty of Medicine, University of Toronto and former Dean of the Faculty of Medicine, University of Toronto. Dr. Holmes was Chairman of the Ontario Council of Health from 1981-86.

In addition to Dr. Holmes, the group has comprised **Dr. Douglas P. Bryce,** formerly, Professor and Chairman, Department of Otolaryngology, University of Toronto, and Otolaryngologist-in-Chief, Toronto General Hospital. Dr. Bryce has a special interest in Laryngeal Pathology.

Dr. John Soper Crawford, currently, Acting Chairman, Department of Ophthalmology, Faculty of Medicine, University of Toronto; Professor, Department of Ophthalmology, Faculty of Medicine, University of Toronto, and formerly Ophthalmologist-in-Chief, Hospital for Sick Children.

Dr. Robert L. MacMillan, former Professor, University of Toronto, previously Senior Staff Physician and Head, Division of General Internal Medicine, Toronto General Hospital; Clinical Service Chief, 5 University Wing, Toronto General Hospital, and presently Staff Physician, Department of Internal Medicine, Toronto General Hospital.

Dr. Ian MacNab, Professor Emeritus, Department of Surgery, University of Toronto and previously Director of Research, Wellsford Research Group, Halifax, Nova Scotia; Past Chief, Division of Orthopaedic Surgery, The Wellesley Hospital, 1966-1985. Dr. MacNab has a special interest in Spinal Research and Surgery.

Dr. Thomas P. Morley, Professor Emeritus, Department of Surgery, University of Toronto; past Head, Division of Neurosurgery, Toronto General Hospital; Previous Consultant to St. Joseph's Hospital, Toronto East General Hospital, Mount Sinai Hospital, Clarke Institute of Psychiatry. Currently retired.

Dr. Neil A. Watters, Professor Emeritus, Department of Surgery, University of Toronto; Previously Head, Division of General Surgery, University of Toronto, and Surgeon-in-Chief, The Wellesley Hospital. Currently retired.

Dr. Robin Hunter was the original psychiatrist in the group. His untimely death in March 1987, left us bereft of counsel in the psychiatry area and in September 1987, **Dr. Fred Lowy,** was added to the group. Dr. Lowy is the recently retired Dean, Faculty of Medicine, University of Toronto; a former Director and Psychiatrist-in-Chief of the Clarke Institute of Psychiatry and Psychiatrist-in-Chief, Ottawa Civic Hospital; Vice President, Association of Canadian Medical Colleges, 1985-1987; Chairman, Council of Ontario Faculties of Medicine, 1985-1987; Visiting Scholar, Kennedy Institute of Ethics, Georgetown University, Washington, D.C., October to December 1987; and Member of the Bioethics Section, Institute of Medical Science, University of Toronto.

The Medical Counsellors have played a number of roles. Through an ongoing series of lectures they have helped to raise the level of the Tribunal's general medical literacy. They also advise Tribunal counsel at the case preparation stage concerning the sufficiency of the medical evidence in particular files.

In the course of preparing a Case Description, when Tribunal counsel concludes that the medical evidence is especially complicated or is left wondering whether there might not be further medical investigation required, he or she now sends the file to the appropriate Medical Counsellor for review. The Counsellor advises the Counsel Office as to whether or not he thinks the evidence is sufficient and, if it is not, what other avenues of investigation ought, in his view, to be explored. If the Counsellor recommends further investigation, then the Tribunal counsel takes that recommendation to a Case Direction Panel — really an Instruction Panel (see above) — for instructions in that respect. The Medical Counsellor will frequently attend with counsel at the meeting with the Instruction Panel.

The Counsellors have also been of great assistance in the Tribunal's recruitment of candidates for appointment as Medical Assessors and in advising the Tribunal Chairman generally with respect to medical profession protocol including, most importantly, advice on the question of appropriate fees for the Medical Assessors.

The role of the Medical Counsellor continues to develop and is subject to ongoing review.

(b) *Appointment of Medical Assessors*

The recruitment and appointment of the Medical Assessors under the provisions of section 86h has proven to be a long and complex affair. The section requires that the Lieutenant Governor in Council make the appointments after "requesting and considering the views of representatives of employers, workers and physicians." The procedure that has emerged to comply with this requirement is as follows.

The members of the Tribunal's Advisory Group (described in the First Report at page 7) were adopted as the "representatives of employers and workers" for this purpose. And because of their seniority and eminence within the medical profession, the Tribunal's Medical Counsellors were considered to be the representatives of physicians for this purpose.

The members of the Advisory Group were invited to suggest the names of appropriate candidates and the Medical Counsellors were also consulted in this respect. They in turn consulted other colleagues within the profession. Names suggested by the Advisory Group or which came to my attention from other sources were reviewed with the Medical Counsellors.

A tentative list of potential candidates was developed in this fashion. The individuals on that list were then approached to see if they would be interested in allowing their names to be entered in the approval process. The help of the Medical Counsellors was often enlisted in this recruitment process.

Once approval had been obtained from a number of such candidates, a list was prepared with attached résumés. The list and résumés were then circulated to the Advisory Group and the members of that group were invited to indicate whether they had any concerns or reservations about the appointment of any of the doctors listed. The names, along with my recommendation and any Advisory Group adverse comments or questions, were then submitted to the Minister of Labour for his approval and submission to the Lieutenant Governor in Council.

This process led finally to the appointment of an initial short list of assessors in May 1987.

The development of a second, expanded list has been under way for a long time, and it is expected that a list of proposed candidates will not be ready for review by members of the Advisory Group until early in the new year. In this second list, the Tribunal has been attempting to ensure an appropriate geographical, ethnic and gender mix amongst the Assessors. Because the Tribunal is also committed to confining the list as much as possible to senior practitioners in the various specialties, the current demographics of the medical profession in Ontario has made the selection process particularly difficult. While the co-operation the Tribunal has received from the medical profession generally has been all that one would have hoped for, there are some areas of the profession and some areas of the province in which the Tribunal has encountered some general reluctance to be involved.

10. Caseload Performance

(a) *Definition of Terms*

In analyzing the Tribunal's caseload performance in its first 12 months, the *First Report* found it necessary to define some terms. Those definitions are still pertinent and bear repeating.

The Tribunal's *caseload* consists of its *workload* plus its *backlog*. The *workload* is the work progressing as planned, the *backlog* is the work which is not progressing as planned. It is the backlog which represents the extent of a tribunal's failure to reach or maintain its production plan.

(b) *The Pre-Hearing Stage*

As mentioned in Section F above, experience has required the Tribunal to adjust its production goals. In the pre-hearing stage where we once thought it would be reasonable to process even significant entitlement and quantum cases in not more than four months except in truly exceptional cases, we now know that the appropriate figure is not

four months but five to six months. See page 24 above where the various pre-hearing stages are defined and the time required for each is indicated.

I am not resigned to the Tribunal never being able to reduce its pre-hearing cycle to the original four-month goal, or less, but I am satisfied that until the impact of the new computerized case management system is known and the Tribunal Counsel Office's role settled, five to six months must be seen to be necessary. As mentioned previously, a chunk of this time is attributable to what is required for the convenience of the parties and their representatives.

There are, of course, categories of cases, such as section 77 Appeals and section 21 Applications, in which the pre-hearing cycle is much less — in the order of six weeks to two months. There are also particularly simple entitlement and quantum cases in which the actual pre-hearing process will in fact be completed in two or three months.

It should also be emphasized that the pre-hearing cycle is measured from notice of appeal to the first hearing date. On this cycle, if the parties are ready, the *setting* of the hearing date will typically occur within three months of the Tribunal receiving the notice of the appeal.

Each week the Tribunal now produces a weekly workload analysis. The analysis as of the end of the reporting period — the week ending October 2, 1987 — is attached as *Appendix C* (Blue) to this report. That analysis shows that at the end of the week, the Tribunal's total active pre-hearing workload stood at 1,002 cases. These are all the cases at various stages in the pre-hearing process which are, generally speaking, available to be worked on. This does include some enforced sitting time. For example, the analysis shows that at the end of that week there were 38 cases in the two-week waiting period between the sending of the case descriptions to the parties and contacting them about a hearing date, and there were 201 cases in which the hearing had been scheduled and the cases were simply waiting for the date to arrive.

The active pre-hearing workload does not, of course, include those cases which are not available to be worked on, but which are on hold for some reason beyond the Tribunal staff's control. As of the week ending October 2, cases of this kind totalled 564 of which 391 were pension cases. (As previously indicated, as of the end of the reporting period pension cases were experiencing a further short-term hold while the Board and the Tribunal worked out certain jurisdictional problems related to the Board's enactment of its new chronic pain policy.)

While the question of what the normal pre-hearing workload consists of is open to considerable interpretation, it appears that in the pre-hearing part of its operation the 1,002 cases indicated in the Appendix C Weekly Workload Analysis represents approximately the normal workload in that part of the Tribunal's operations. Thus, in the Tribunal's opinion, as previously indicated, there is no backlog problem in the pre-hearing part of the operation.

This situation will change again when the short-term hold on the pension cases is lifted. Thus there will be a portion of the Tribunal's third year during which a backlog will exist at the pre-hearing stage. However, barring some truly unforeseen increases in the incoming caseload, backlog is not now a matter of serious concern in the pre-hearing part of the process.

(c) *The Post-Hearing Backlog Problem*

The backlog problem now lies, as was indicated previously, at the post-hearing, decision-making stage. It is a problem which has proved impervious to a variety of strategies and represents by a long measure the Tribunal's most important single ongoing problem.

It is also a problem that is rooted in the nature of the Tribunal's role as a new adjudicative agency in an operationally mature area of activity. Since the Tribunal's experience in this regard seems likely to be of general interest from an administrative law point of view, and of some value to future agencies similarly fixed, I have devoted some considerable space in this report to analyzing the sources of this problem.

As with the pre-hearing operations, it is important in understanding and assessing the backlog problem in the post-hearing stage to start with a realistic picture of the *normal* workload.

On September 21, 1987, I presented a major report to the Tribunal on the decision-making backlog. In that report, I attempted a detailed assessment of what the post-hearing workload would be if everything were going well. Defining what the normal, overall workload in this phase of the Tribunal's operations actually is, is not a straight forward matter and there had been no previous attempt to describe it.

My assessment in this regard was based on certain estimates as to the proportion of cases which will fall into various categories of workload following the first hearing, and as to the time required for cases in those categories to progress through the various post-hearing processes when everything is going well. The estimates are based on the Tribunal's experience to date and are consistent with the statistical records in this area such as they are. It is important to appreciate, however, that there is a large element of educated guess-work in these estimates. The estimates will be of particular interest to the Tribunal's constituencies because they do confirm the slippage relative to the original two-month post-hearing goal previously mentioned. A summary of those estimates is as follows:

1. Of every *ten* cases in which the first hearing day is completed, *seven will require no further hearings and will emerge from the first post-hearing panel caucus (which typically occurs immediately following the hearing) ready to write; two* will require further submissions or investigations (typically medical), and *one* will have been recessed for continuation of the hearing.
2. For cases in the hands of full-time Vice-Chairs, of the *seven* ready to write, *five* can be decided, written and issued within two months; *one* will take three months, and *one* will take four months.
3. For cases in the hands of part-time Vice-Chairs, of the *seven* ready to write, all will take three months to decide, write and issue. This different estimate for part-time Vice-Chairs reflects the fact that, on the one hand, the Chairman tends to assign less difficult cases to panels chaired by part-time Vice-Chairs but on the other that the processing time is inevitably longer because the part-time Vice-Chairs are not resident in-house.
4. For full-time Vice-Chairs, of the *two* cases requiring further submissions or investigations each will take, on average, three months to complete the submissions or investigations and a further two months to decide, write and issue.
5. The part-time experience with respect to this latter type of case ought to be about the same as the full-time experience.
6. For both full-time and part-time Vice-Chairs, the *one* case which is recessed to another hearing day, will require three months in which to arrange another hearing date and a further four months to then decide, write and issue the decision. The extra deciding and writing time reflects the fact that a case which cannot be disposed of completely in the time allotted on the first hearing date is likely to be especially complicated.

The full-time Vice-Chairs are scheduled to a target of three hearings a week. Currently, when other responsibilities and vacations and holidays, etc., are taken into account, this weekly target actually produces approximately 2.5 new cases for each Vice-Chair to decide in each of the 52 weeks of the year.

When, on the basis of the foregoing estimates, one traces the build-up of a full-time Vice-Chair's workload over time — charting, as each month goes by, the additions to the various categories, the movement between categories and the decisions issued each month — the steady-state profile of a typical workload for a Vice-Chair looks, at the end of any particular month, like this:

1. Decisions to be written over the next two months		16
2. Decisions to be written over the next three months		4
3. Decisions to be written over the next four months		9
4. Cases in the Hearing Complete but on Hold category		8
5. Cases in the Recessed to another date category		5
	TOTAL	42

Assuming that the Tribunal is operating with its full complement of ten full-time Vice-Chairs (one appointment was still pending at the end of the reporting period), the total normal workload for the full-time Vice-Chairs would be 420 cases. A similar analysis for the part-time Vice-Chairs as a group — assuming that they will as a group be dealing with approximately 40 cases a month — indicates the normal workload for the group at the end of any particular month would be 152 cases. Thus, the total normal post-hearing steady-state workload for the Tribunal overall would be approximately 570 cases.

The latter estimate is based on an operating level of 140 *hearings* per month. However, during the last eight months of the reporting period — the period of time over which the bulk of the current workload may be taken to have built up — the Tribunal averaged 125 hearings a month. Accordingly, the normal workload against which the present total caseload is to be compared for the purpose of determining the size of what can be fairly characterized as the post-hearing backlog, must be proportionately reduced. Thus, if the Tribunal were producing in the post-hearing phase at a normal production level, the workload that one would have expected to find at the end of the period — relative to the actual experience with the hearing rate over the preceding eight months — would be approximately *500* cases.

The actual, total post-hearing caseload at the end of the reporting period was *758* cases. Accordingly, as of the end of the reporting period, the Tribunal was suffering from a post-hearing backlog of *258* cases. That backlog is to be found in the slippage of the actual experience against the normal times in each phase of the post-hearing processes as estimated above, but is most prominent with respect to cases in the ready-to-write category.

The backlog measurement which is, of course, of most significance is the extent of the delays which have been visited upon individual workers and employers. The problem presents itself graphically in the Graph of Input and Output Trends attached as Appendix D (Orange).

For the total period of the Tribunal's existence, the average time between the end of the hearing and the issuing of interim and final decisions was 3.7 months. Broken down by category of cases the average times are as follows:

Section 15 Application (to prohibit Civil law suits)	—	33	decisions	4.5	months.
Leave-to-Appeal Applications (86o)	—	165	decisions	2.7	months.
Objections to Employer-arranged Medical examinations (s. 21)	—	20	decisions	3.8	months.
Appeals re Access to workers' files (s. 77)	—	218	decisions	2.8	months.
Entitlement, Quantum and others	—	842	decisions	4.1	months.
Total final and interim decisions issued:	—	1278	overall average	3.7	months.

It may be noted in this respect that it is in the last category — Entitlement, Quantum and Others — where the bulk of the major cases are to be found. There, also, are most of the cases which required post-hearing submissions or investigations as well as those which had to be recessed. The average time indicated in that category includes the time required for these extra post-hearing activities. Since approximately 20 per cent of the Tribunal's total cases have led to post-hearing activities of one kind or another and another 10 per cent are recessed to a second hearing date, and most of the cases of both types are to be found in the entitlement quantum category, it is fair to conclude that the actual average time between the point at which the cases in this category were actually ready to write and the date they were issued would be somewhat less than the 4.1 months shown.

The Tribunal believes the time taken to make the decisions that have been actually issued is, on average, reasonably acceptable under all the circumstances.

The reader will appreciate, however, that while those numbers may indicate a fairly reasonable level of performance as far as the decisions which have been issued are concerned, they do not deal with the cases where decisions have not yet been issued. And, of course, it is here where the true problem lies. As indicated in the Chairman's Overview, at the end of the reporting period the Tribunal had on its books 207 cases in which the hearings had been complete six months without a decision issuing, and of these 47 had been complete for over 12 months.

There are several factors which have contributed to this problem, but as previously indicated, the major influence in this regard has been the nearly catastrophic nature of the issue overload.

The problem has been addressed through a series of strategies that were not successful but, in September, steps were taken which I expect will solve this problem by some time early in the new year.

These are as follows:

First, it was agreed that any Vice-Chair with a significant backlog of decisions would not be assigned to any further cases until his or her backlog had been resolved. This meant a significant transfer of resources from hearing cases to only deciding cases and a reduction in the short run of the Tribunal's capacity to hear cases.

Second, drafts and other decision-related documentation pertaining to backlogged cases were assigned overriding priority in the work of the word processing centre, secretaries and worker and employer Members.

Third, part-time Vice-Chairs with intractable backlogs were urged to schedule blocks of writing time into their future schedules and to plan to take up residence in the Tribunal during that writing time, close to the worker and employer Members with whom they would have to be working with respect to those decisions and adjacent to the administrative and other back-up services that they would require.

Fourth, a formal, structured control system was initiated designed to routinely track the progress of all cases at the decision-making stage and to identify cases at the point where they start to depart from the expected track. The system is designed to assist Vice-Chairs to identify and to confront at an early stage cases with which they are having special difficulty and to ensure that whatever additional help or back-up with respect to such cases is needed, is provided. The goal of this control system is to ensure that inordinate delays in the issuing of any decision occur only when they are not reasonably avoidable and only as a result of deliberate choices justified by well-understood reasons.

Finally, steps were taken to fill the one remaining full-time Vice-Chairman position and to add another four, part-time Vice-Chairmen. This was done in order to provide some balance against the transfer of existing Vice-Chair resources out of the hearing schedule and in anticipation of the possibility that a long-term solution may require some permanent reduction in the full-time, Vice-Chairs' hearing schedules.

(d) *The incoming caseload*

During the reporting period, the Appeals Tribunal received a total of *1,854* new cases. The breakdown amongst the various categories of cases and the chronological analysis may be seen in the tables and charts in *Appendix E* (Grey) attached.

(e) *The Tribunal's production*

During the same period, the Tribunal held hearings in *1,373* cases, and disposed of *1,505* cases — *553* cases disposed of without a hearing and a total of *952* final decisions issued after a hearing. The breakdowns and the production experience in chronological terms may be seen in the tables, charts and graphs in *Appendix F* (Red), attached.

11. Decision No. 915

Decision No. 915 was the culmination of the Tribunal's pension assessment appeals leading case strategy. It was released on May 22, 1987, following 24 days of evidence and three days of submissions from two parties, eight intervenors, and WCB and the Tribunal's counsel. The evidence included substantial testimony from senior Board officials as to the Board's policies, procedures and practice and extensive medical evidence on the subject of chronic pain.

The decision was summarized by the hearing panel itself in the following terms:[2]

- The Panel agrees with the Board's interpretation of section 45 and, while it identifies possible problems with the Board's Rating Schedule, it finds that on the evidence in this case the Rating Schedule meets the requirements of the Act.
- The Panel finds disabling Chronic Pain conditions which develop from industrial injuries to be generally compensable in principle, subject to genuineness and adequate motivation.
- The Panel recognizes that the Board does not presently compensate for chronic pain and that a change in that policy will involve the development of a new Board chronic pain assessment strategy and assessment expertise.
- The Panel proposes an interim Tribunal chronic pain assessment strategy for pension appeals received in the meantime, subject to subsequent reconsideration once the Board's chronic pain assessment policies are in place.
- The Panel identifies the need for an early treatment and return to work strategy for incipient chronic pain cases (similar to what the Board is currently developing) which will require improved union and employer co-operation in accommodating disabled workers in the work-place.
- In the particular case, the Panel concludes that the worker is suffering from a back and leg disability. The disability is caused by a permanent lower back organic lesion complicated by chronic pain magnification associated with a Psychogenic Pain Disorder.
- Contrary to the Board's assessment which was based on the organic element only, the Panel finds that both elements of the disability result from the industrial accident and are compensable.
- The Panel rates the worker's pension level by estimating the best-fit of his total disability with the bench-mark disabilities in the Board's Rating Schedule.
- After considering evidence of symptom exaggeration and adjusting for minor undermotivation, the Panel rates the pension level at 25%. The Board's rating was 15%.
- The Panel reserves on the difficult question of retroactive payments and on that issue invites further submissions.
- As previously arranged with the parties, the SIEF issue of possible transfer of responsibility for costs from the employer to the Accident Fund generally is to be the subject of reconvened hearings.

The hearing of submissions from the parties and intervenors on the retroactivity issue — the issue reserved for further consideration — is scheduled for October 1987.

12. The Library

The Tribunal is particularly proud of its Library. The character of the Library as it has developed and the use it is attracting — both internally and from the Tribunal's various constituencies — are described below. This is a resource which in my view is indispensable in dealing with workers' compensation issues on an adequately informed basis and is one which has not previously been readily available — at least not in Ontario.

Over the past year, the Tribunal Library has settled into its permanent quarters. The Library collection now stands at about 2,500 books and reports (102 journal titles). The collection has been catalogued using the UTLAS

[2] Decision 915, Point-Form Synopsis.

cataloguing system. The Library staff scans publishers' reports, journals, conference proceedings, newspapers, on-line information retrieval systems and other library bulletins for items of interest to library users related to advocating and adjudicating workers' compensation cases. Special efforts have been made to acquire material of historical interest.

The Library has adopted an acquisition policy which attempts to strike a balance between ownership of material and bibliographic awareness. Through the book and report collection and the journals and vertical files, research can be started in areas related to administrative and constitutional law, to workers' compensation law or policy, or to the medical issues related to cases before the Tribunal. The collection is supplemented by access to on-line information retrieval, library resources in the community and current awareness services.

The Library serves the Appeals Tribunal's Members and staff and employer or worker representatives, lawyers, injured workers and others involved in or interested in workers' compensation. Full service hours in the Library are 9 a.m. to 5 p.m., Monday to Friday.

During the reporting period the Library staff:

- added 1,700 records to the vertical file database. A selected list of new articles is circulated monthly to Tribunal staff and to the public on request (720 photocopies were made of articles on these lists).
- upgraded the software used to search the WCAT DECISIONS DATABASE providing for keyword, panel, section number, date range and text word searches. Library staff has trained both WCAT staff and the public on use of this database and has filled both phone and in-person requests for searches (200 since April). A copy of this database has been sent to the Canadian centre for Occupational Health and Safety and will be used as the basis of a WCAT decisions database on their information retrieval system — CCINFO.
- started a database of workers' compensation appeals decisions of other jurisdictions, e.g., Quebec, New Zealand, Manitoba.
- expanded the Library current awareness service to include tables of contents of journals received in the Library and recent court decisions. Current-awareness computer searches of several information retrieval systems are done monthly in the coming year will include User Designed Profiles.
- organized the Library collection of Canadian, U.S. and British court cases dealing with workers' compensation issues.
- answered numerous reference queries from the staff and the public. (Statistics have been kept since April and 513 queries were received.)

The Library provides staff with access to on-line information retrieval systems on request and has done 135 searches to date. Interlibrary loans and photocopies resulting from these searches and other research total 1,195. To speed interlibrary loan requests, the Library staff uses electronic mail or on-line order services. Library staff routinely visit nearby libraries to keep up with the demand for photocopies of research material.

13. Publications

During the reporting period, the Research and Publications Department continued to index and summarize the decisions of the Tribunal. Decisions are available individually at a cost of $2.00 (approximately 500 decisions were requested during the year) or through the Decision Subscription Service which includes all significant decisions. The Decision Subscription Service presently has a subscriber list of 450. Significant decisions are summarized and the summary (or outline) is attached to the full text. This outline serves to call attention to the significant legal, medical or factual details of the decision.

Various indices are available: the keyword index, the numerical index, the Section 15 index and the annotated statute. These are available to subscribers or on request. Creation of the annotated statute and the numerical index has been facilitated by the use of data management software — CARDBOX PLUS. It is anticipated in the coming year that these indexes will be produced monthly and will be up to date within a month of current material.

To further enhance research of the Tribunal's published decisions, a full text search service is planned through Infomart Information Management Group, using BASIS software for search and retrieval of decisions. Availability of this database to the Members and staff of the Tribunal and to the public is planned for 1988.

The first volume of the Tribunal's *Compensation Appeals Forum* appeared in October 1986. The Forum has been designed to provide a forum for a public exchange of views on Tribunal decisions, its practice and procedure, etc. The first volume contained articles on the history of the Tribunal, the role of the Tribunal counsel, and the Tribunal's handling of the chronic pain issue in *Decision Nos. 9* and *50*. Contributors included a Tribunal staff member, a worker representative and an employer representative. Volume 2(1) was also published and continued to reflect in its contents the tripartite character of the Tribunal. Volume 2(2) is scheduled for publication in October

1987. An issue devoted to the topic of causation in workers' compensation is planned in the coming year. A general call for papers has been issued. Copies of the journal are circulated free of charge.

The publication of the Workers' Compensation Appeals Tribunal *Reporter* was postponed. It is now projected that the first volume will be available in January 1988. This *Reporter* will be published for the Tribunal by Carswell Legal Publications. Subscription price will be $40 per year to new subscribers and $20 per year to current subscribers of the Decision Subscription Service.

The Tribunal continued to publish and distribute a Newsletter containing schedules of out-of-Toronto hearings, information about appointments to the Tribunal, updates on research, library and publications resources and other items of interest.

14. French-Language Services/Training

The Tribunal continued during the past year to increase its ability to provide services in the French language. A three-year plan was prepared to enable the Tribunal to implement the *French Language Services Act*. The plan provides a program to acquire additional staff and to achieve a high level of response to the requirements of employers and workers appearing before the Tribunal who wish to use the French language. Certain programs are already in place to provide a bilingual capacity.

The Tribunal policy and direction for French language results is directed by the French Language Services Committee comprised of Members representative of Employers and Workers, Vice-Chairmen and senior staff.

During the past year the Tribunal translated 32 documents into French, including the "Outline" of *Decision No. 915*. Also, the Chairman's *First Report* was translated into French and has received wide distribution. Every effort has been made to provide bilingual signage throughout the Appeals Tribunal with emphasis in the reception area, the library and the hearing rooms.

It is also important to note that two Vice-Chairs and two panel members are fluent in French. This resource enables the Tribunal to schedule bilingual panels. To date two French-language hearings were planned, with bilingual panels and simultaneous translation. These hearings were withdrawn or adjourned for matters unrelated to the conduct in the French language. Also, bilingual panel members meet daily to discuss issues related to the hearings to maintain their fluency level.

The Tribunal is updating the French/English lexicon or glossary which serves as an authoritative reference to assist with the translation of decisions and related material.

The opportunity for employees at the Appeals Tribunal to enrol in French-language training courses is encouraged. The Tribunal, through the assistance of the Ontario Institute for Studies in Education and the Human Resources Secretariat, has provided French-language training to four levels, including introductory, intermediate, advanced and superior. The following is a summary of interest and attendance at French language training:

— January/March 1987	— 41 employees
— March/June 1987	— 19 employees
— July/September 1987	— 7 employees

15. Representation at Hearings

The Tribunal's experience during the reporting period with respect to the qualifications of the individuals appearing as representatives of workers or employers may be judged from the worker and employer representation profiles set out in *Appendix G* (Purple), attached.

The Tribunal's experience with so-called para-professionals engaged in the business of appearing before the Tribunal on behalf of one or other of the parties for a fee is, as Appendix G will show, limited. It is, however, very uneven. Some "consultants" are highly professional and exceptionally competent. Others are doing a disservice to their clients.

The Tribunal has had a number of occasions to contemplate what duty it might have to bring neglect, ignorance or incompetence of representatives to the attention of their clients or to some other authority. It has, however, always concluded that such intervention was inappropriate for an adjudicative tribunal.

The Tribunal's experience in this regard indicates a need for public institutional arrangements for the training and supervision of professional representatives.

I. THE TRIBUNAL'S RECONSIDERATION POWER — THEORY AND PROCEDURE

By the terms of sections 86m and 76 of the Workers' Compensation Act, the Tribunal's powers of reconsideration read as follows:

> The Tribunal may, at any time if it considers it advisable to do so, reconsider any decision, order, declaration or ruling made by it and vary, amend or revoke such decision, order declaration or ruling.

During the reporting period, the Tribunal had occasion to consider a substantial number of applications for reconsideration of its decisions and to develop policies concerning the use of this discretionary power. Practice Direction 8 spells out the Tribunal's procedural approach to such applications and *Decisions No. 72R* and *72R2* are decisions in which the Tribunal's substantive approach was first articulated.

The Tribunal's basic position with respect to applications for reconsideration is that from the public interest perspective the importance of the Tribunal's decisions being — and being seen to be — final, is paramount and, accordingly, decisions should not be susceptible to being re-opened except in exceptional circumstances. The Tribunal also considers that section 76 defines a power which is highly discretionary and that embarking on a serious consideration of whether or not to resort to it in a particular case is also a discretionary activity which is not automatically invoked merely by a party's application.

When an application for reconsideration is received, I make an initial decision as to whether there is sufficient potential substance in the submissions in support of the application to warrant my establishing a panel to consider it. This exercise of the Chairman's discretion under section 86e of the Act screens out those applications where it is apparent that the applicant is merely seeking to have the Tribunal consider his or her case a second time.

Applications alleging error or missed evidence or new evidence or any matter that is arguably not without at least potential substance, I refer to a panel of the Tribunal which I establish for the purpose of reviewing the application in question. The Panel so established is usually — but not always — the hearing panel which heard and decided the case in the first instance.

The question I refer to the review panel at this point is only whether the written submissions accompanying the application for reconsideration present — on their face — a serious enough case, relative to the Tribunal's criteria for embarking on a reconsideration, to require that the other party or parties in the case be given an opportunity to respond to the application. The response in question is, in the first instance, with respect to the issue as to whether or not the application has met the Tribunal's criteria for re-opening a case and embarking on a reconsideration. If the panel does not believe there is sufficient merit to the application to require it to hear such submissions in response, I will be so advised, and will thereupon advise the applicant that his or her application has been rejected.

If, on the issue as to whether or not a reconsideration should be embarked upon, the panel concludes that the application has sufficient merit to warrant inviting the other party or parties to respond on that issue, then a copy of the application is sent to the other party and submissions are requested. Normally, this preliminary issue would be decided on the basis of written submissions only, although the panel could elect to proceed to a hearing. Upon receipt of such submissions, the panel then decides whether or not the application has satisfied the Tribunal's criteria for re-opening a decision and embarking on the reconsideration authorized by section 76.

If the panel decides the criteria has been met, it advises me to that effect and I then establish a Tribunal panel for the purpose of conducting the reconsideration and determining whether the decision should be "varied or amended" — and, if so, how — or whether it should be "revoked" and, if it should be "revoked" what if anything should be done in the light of the revocation. Here, again, it would be usual to establish for this purpose the same panel which had heard and decided the case in the first instance. However, a differently constituted panel could also be appointed. Before deciding the application for reconsideration on its merits, the appointed panel would hold a hearing.

The Tribunal also reserves to itself the right to undertake a reconsideration on its own initiative. To date this has happened on one occasion.

I have found a pervasive tendency, amongst parties and their representatives, and within the Tribunal itself, to ignore the distinction between the decision to embark upon a reconsideration — that is, the decision to exercise the section 76 powers — and the decision to be taken at the end of such a reconsideration as to whether or not to confirm, vary, amend or revoke the original decision. The distinction is, however, one which must be maintained if the Tribunal is to keep control of its processes in this regard. Whether or not to embark on a reconsideration is a very different issue from whether or not to confirm, vary, amend or revoke after the reconsideration has been completed. Careful development of appropriate criteria for the determination of this threshold issue is required if the concept of the Tribunal's decisions as final decisions is to have real substance.

J. 1986 CHALLENGES REVIEWED

In the *First Report* (at page 23), the Chairman listed a number of particular challenges which as of the end of September 1986 the Tribunal still had to meet. A review of how the Tribunal stands with respect to each of those challenges as of the end of September 1987, would seem to be indicated.

1. Demonstrating that the Tribunal is capable of disposing of 215 cases a month

As indicated above, the resources as planned in 1986 proved unable to produce at this level. A year-long average monthly production capacity of 160 to 170 cases appears to be the Tribunal's limit based on current resources.

2. Installing a major integrated computer system successfully

By the end of September 1987, this project, while not completed, was well in hand.

3. Delivering a sound decision in the Pensions Appeals Leading Case

The extent to which this challenge was met is obviously a matter of some controversy within the Tribunal's various constituencies. The Tribunal is satisfied, however, that this goal was achieved.

4. Effecting the transfer from the scrambling style of management necessitated in the Tribunal's formative months to a professional day-to-day management

The Chairman is satisfied that the day-to-day management of the Tribunal's affairs is professional, competent and effective.

5. Reducing the time it takes to issue a decision after the hearing is complete

This is a challenge the Tribunal has so far clearly been unable to meet. See the lengthy discussion of this problem above.

6. The training of workers and employers in the Tribunal's procedures and process

The worker and employer communities were slow to respond to the Tribunal's interest in this area. However, as indicated above, some progress in this area is now beginning to be seen.

7. Providing hearings in the French language

See in this respect the report concerning French Language Services generally at page 28, above.

8. Appointment of a French-speaking member representative of workers

This was accomplished in May 1987. See above at page 28.

9. French Language services generally

See above.

K. FINANCIAL STATEMENTS

Financial statements for the Tribunal's second fiscal period (April 1, 1986 to March 30, 1987) are attached as *Appendix H* (Brown). They consist of a Summary Statement of Expenditures and a detailed Statement of Expenditures.

The budget against which the expenditures are compared in these statements was prepared for the Minister's approval in December 1985 — three months after the Tribunal came into existence. The variances between budget and expenditures are significant but under the circumstances not surprising. The net underexpenditure of 2.6 million dollars reflects primarily the facts that anticipated operating levels were not reached as quickly as anticipated and the capital expenditure on the computer system was not required during this fiscal period for reasons that have been explained elsewhere. (See the First Report).

All of which is respectively submitted, at Toronto, Ontario, as of September 30, 1987.

S.R. Ellis
Chairman

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX A

TRIBUNAL MEMBERS
ACTIVE DURING THE REPORTING PERIOD

THE MEMBERS OF THE TRIBUNAL

Chairman

S. Ronald Ellis
Mr. Ellis is the Tribunal's first Chairman. He assumed office on October 1, 1985. Mr. Ellis, who trained and practised as an engineer before going to law school, was formerly a partner in the Toronto law firm of Osler, Hoskin & Harcourt. More recently, he was a faculty member at Osgoode Hall Law School where he was Director and then Faculty Director of Parkdale Community Legal Services. He came to the Tribunal from his position as Director of Education and head of the Bar Admission Course for the Law Society of Upper Canada. In addition, Mr. Ellis has significant experience as a labour arbitrator.

Alternate Chairman

James R. Thomas
Mr. Thomas was appointed to the Tribunal as a Vice-Chairman, effective October 1, 1985, and was assigned by the Chairman to the position of Alternate Chairman. A lawyer with a degree in electrical engineering, Mr. Thomas worked with Canadian General Electric before entering the legal profession. His experience with C.G.E. included six years in managerial positions at one of its manufacturing facilities. He was called to the Bar in 1983. Prior to joining the Tribunal, he had extensive involvement with workers' compensation matters, both through his law practice and his work with community clinics. The position of Alternate Chairman is not one that is defined by the Tribunal's legislation. It is a management position created by the Chairman as a means of sharing the administrative and management load that devolves on the Chairman's Office. The title was chosen to reflect the senior nature of the position and the fact that the incumbent is also the Vice-Chairman appointed by the Chairman — pursuant to provisions in the legislation in that respect — to act in place of the Chairman in the event of the Chairman's absence from the Province or his inability to act. The Alternate Chairman, like the Chairman, has both a management and an adjudicative role.

Full-time Vice-Chairmen

Laura Bradbury
Ms. Bradbury was appointed to the Tribunal effective October 1, 1985. Called to the Bar in 1979, she acted as counsel for injured workers and, for the two years prior to her appointment, was an investigator with the Office of the Ombudsman.

Nicolette Catton
Ms. Catton was appointed to the Tribunal effective October 1, 1985. A graduate in sociology, she was with the Office of the Ombudsman for nine years prior to her appointment. From 1978 to 1985, she was in charge of the Ombudsman's Workers' Compensation Directorate.

Maureen Kenny
Ms. Kenny was appointed to the Tribunal effective July 30, 1987. She was called to the Bar of Ontario in 1979. Following a period of private practice in the field of labour law, Ms. Kenny joined the (Ontario) Ministry of Labour as a policy analyst. She came to the Tribunal originally in October 1985, in the position of Counsel to the Chairman.

Faye W. McIntosh-Janis
Ms. McIntosh-Janis was appointed to the Tribunal effective May 14, 1986. She was called to the Bar of Ontario in 1978, and was a full-time member of the Research Department at Osler, Hoskin & Harcourt for six years. She comes to the Tribunal from the position of Senior Solicitor with the Ontario Labour Relations Board.

Elaine Newman
Ms. Newman was appointed to the Tribunal effective July 9, 1986. Called to the Bar in 1979, Ms. Newman was previously senior staff lawyer with the Advocacy Resource Centre for the Handicapped in Toronto. She joined the Tribunal originally in October 1985, in the position of senior lawyer in the Tribunal's Counsel Office.

Kathleen O'Neil
Ms. O'Neil was appointed to the Tribunal effective January 22, 1986. She was a lawyer with the Ontario Nurses' Association, and with the Federation of Women Teachers' Association. Prior to her appointment, she practised with the firm of Symes, Kitely & McIntyre. She has also chaired the Justice Committee of the National Action Committee on the Status of Women.

Antonio Signoroni
Mr. Signoroni was appointed to the Tribunal effective October 1, 1985. A practising lawyer since 1982, Mr. Signoroni had ten years experience as a part-time chairman to the Board of Referees of the Unemployment Insurance Commission. Before entering the legal profession he was involved extensively with service to the Italian community. He was a Trustee on the Metro Separate School Board from 1980 to 1982.

Ian J. Strachan
Mr. Strachan was appointed to the Tribunal effective October 1, 1985. Called to the Bar in 1971, Mr. Strachan's law practice involved advising small businesses with respect to a variety of commercial matters and employee-related issue. He has also served as a director of the Canadian Organization of Small Business.

Members Representative of Employers and Workers: Full-Time

Robert Apsey
Mr. Apsey was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He held a number of responsible positions at Reed Stenhouse during his 25 years with that firm until his early retirement in 1983, as a Vice-Chairman of the Board and Senior Vice-President.

Brian Cook
Mr. Cook was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. A graduate of the University of Toronto, Mr. Cook was a community legal worker with the Industrial Accident Victims Group of Ontario for five years.

Sam Fox
Mr. Fox was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. A past president of the Labour Council of Metropolitan Toronto, Mr. Fox is a former Co-Director and International Vice-President of Amalgamated Clothing and Textile Workers Union.

Karen Guillemette
Ms. Guillemette was appointed to the Tribunal as a Member representative of employers effective July 2, 1986. Ms. Guillemette has been the Administrator of Occupational Health at Kidd Creek Mines Limited in Timmins, and has been an active member of the Ontario Mining Association. Prior to her position as Administrator, she was the Industrial Nurse at Kidd Creek Mines.

Lorne Heard
Mr. Heard was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. With more than 30 years of experience in workers' compensation matters, Mr. Heard came to the Tribunal from a 13-year career with the United Steelworkers of America where he had national responsibility for occupational health and safety, and workers' compensation.

W. Douglas Jago
Mr. Jago was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. Mr. Jago had been Managing Director of Brantford Mechanical Ltd., and President and principal owner of W.D. Jago Ltd., both mechanical contracting concerns. He was an active member of the Mechanical Contractor's Association.

Frances L. Lankin
Ms. Lankin was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. For five years prior to her appointment, she was the Research/Education Officer for the Ontario Public Service Employees Union. She was also that union's equal opportunities coordinator.

David C. Mason
Mr. Mason was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. Mr. Mason came to the Tribunal following a number of years as an industrial relations personnel manager with Rio Algom Ltd.

Nick McCombie
Mr. McCombie was appointed to the Tribunal as a Member representative of workers effective October 1, 1985. His move to the Tribunal followed seven years' service as a legal worker at the Injured Workers' Consultants legal clinic in Toronto.

Kenneth W. Preston
Mr. Preston was appointed to the Tribunal as a Member representative of employers effective October 1, 1985. A graduate chemical engineer, Mr. Preston was Director of Employee Relations for Union Carbide for ten years and Vice-President of Human Resources for Kellogg Salada for three years.

Maurice Robillard
Mr. Robillard was appointed to the Tribunal effective March 11, 1987. Prior to his appointment, he was an international representative of the Amalgamated Clothing and Textile Workers' Union of America for 20 years with a wide range of experience including mediation of internal union problems, negotiating contracts, appearances before various provincial labour relations boards and advising workers of their rights under provincial labour laws.

Jacques Seguin
Mr. Seguin was appointed to the Tribunal as a Member representative of employers effective July 1, 1986. Mr. Seguin was Chairman of the Softwood Plywood Division of the Canadian Hardwood Plywood Association C.L.A. and Vice-President of CHPA from 1981 to 1983, and retired from Levesque Plywood Limited as General Manager in 1984.

PART-TIME MEMBERS OF THE TRIBUNAL

Part-Time Vice-Chairmen

Arjun Aggarwal
Dr. Aggarwal was appointed to the Tribunal effective May 14, 1986. He is currently the coordinator of labour management studies at Confederation College in Thunder Bay, Ontario. He has past experience as a labour lawyer, labour consultant, conciliator, fact-finder, referee, and is an approved arbitrator.

Jean-Guy Bigras
Mr. Bigras was appointed to the Tribunal effective May 14, 1986. Mr. Bigras is a bilingual communications specialist, writing reports and speeches for government agencies and private relations firms. He was formerly the Chief, Creative Services, General Secretariat of the National Capital Commission, and Manager of Information Services of the Export Development Corporation. He spent 10 years with the North Bay Nugget, first as a District Editor and finally as City and News Editor.

Sandra Chapnik
Appointed to the Tribunal effective March 11, 1987, Ms. Chapnik practices with the law firm of Leonard A. Banks and Associates. She has also served as a part-time Rent Review Commissioner and a Fact Finder for the Education Relations Commission.

Gary Farb
Mr. Farb was appointed to the Tribunal effective March 11, 1987. He is in private practice and was called to the Bar in 1978. He has a wide range of experience in administrative law, including two years as legal counsel in the Office of the Ombudsman.

Ruth Hartman
Ms. Hartman was appointed to the Tribunal effective December 11, 1985. She is currently in private practice with an emphasis on administrative appeals to provincial tribunals. She was previously counsel to the Ombudsman for five years.

Joan Lax
Ms. Lax was appointed to the Tribunal effective May 14, 1986. Called to the Bar in 1978, she has practised with the law firm of Weir & Foulds, with emphasis on administrative and civil law. She is currently the Assistant Dean, Faculty of Law, University of Toronto.

John M. Magwood
Appointed to the Tribunal effective December 11, 1985, Mr. Magwood was called to the Bar in 1936 and has been a prominent member of the Ontario Bar for over 40 years. Over the past eight years, he had been the chairman of the Canadian Executive Services Overseas (CESO).

Victor Marafioti
Mr. Marafioti, appointed to the Tribunal effective March 11, 1987, is currently the Director of Business Programs at Centennial College of Applied Arts and Technology. For approximately ten years, he was the Director of COSTI, a rehabilitation centre with extensive involvement with the Workers' Compensation Board.

William Marcotte
Mr. Marcotte was appointed to the Tribunal effective May 14, 1986. He is a mediator and is on the list of approved arbitrators with the Ministry of Labour. He teaches collective bargaining processes and educational organizations at the University of Western Ontario.

Eva Marszewski
Ms. Marszewski was appointed to the Tribunal effective May 14, 1986. She was called to the Bar in 1976 and is, at present, in private practice with special emphasis on civil litigation, family law, municipal law and labour law. She is a past member of the Ontario Advisory Council on Women's Issues.

John Paul Moore
Mr. Moore was appointed to the Tribunal effective July 16, 1986. Called to the Bar in 1978, Mr. Moore is currently a staff lawyer with Downtown Legal Services on a part-time basis, dealing with various administrative tribunals.

Denise Reaume
Appointed to the Tribunal effective March 11, 1987, Professor Reaume is a Professor of Law at the University of Toronto. She teaches administrative law and her past experience includes a research study entitled, "Compensation for Loss of Working Capacity" for the Ontario Law Reform Commission.

Sophia Sperdakos
Ms. Sperdakos was appointed to the Tribunal effective May 14, 1986. She was called to the Ontario Bar in 1982 and is currently with the law firm of Dunbar, Sachs, Appeal. She was a chairperson and caseworker with the Community and Legal Aid Services programme at Osgoode Hall Law School.

Susan Stewart
Ms. Stewart was appointed to the Tribunal effective May 14, 1986. Ms. Stewart articled with the Ontario Labour Relations Board and was called to the Bar of Ontario in 1980. She has been a lawyer with the Ontario Nurses' Association for approximately four years and has participated in arbitration hearings as an advocate and union nominee.

Gerald Swartz
Mr. Swartz, appointed to the Tribunal effective March 11, 1987, was at one time Director of Research for the Ministry of Labour. He is now the President of Canadian Loric Consultants Ltd. He has experience in human resources management, negotiating collective agreements, arbitrations, and workers' compensation and employment standards assessments.

Paul Torrie
Mr. Torrie was appointed to the Tribunal effective May 14, 1986. He is currently a partner in the law firm of Torrie, Simpson, practising in a wide range of litigation, administrative and corporate law. Mr. Torrie's additional work experience includes community legal work with the Osgoode Hall Community Legal Aid Services programme.

Peter Warrian
Mr. Warrian was appointed to the Tribunal effective May 14, 1986, and has extensive labour relations experience through his involvement with the Ontario Public Service Employees Union. He currently carries on a consulting business with government and union clientele and has written extensively in the labour relations field.

Chris Wydrzynski
Professor Wydrzynski was appointed to the Tribunal effective March 11, 1987. He is a professor of law at the University of Windsor (since 1975) and was called to the Bar in 1982. He teaches administrative law and has acted as a referee, analyst, consultant, research evaluator and panelist.

Members Representative of Employers and Workers: Part-Time

Shelley Acheson
Ms. Acheson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. She was the Human Rights Director of the Ontario Federation of Labour from 1975 to 1984.

Dave Beattie
Mr. Beattie was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He has 20 years of WCB experience representing injured workers or disabled firefighters in Appeals Adjudicator and Appeal Board hearings.

Frank Byrnes
Mr. Byrnes was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. He was formerly a police officer and has been a member of the Joint Consultative Committee on Workers' Compensation Board matters.

Herbert Clappison
Mr. Clappison was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. Mr. Clappison retired from Bell Canada in 1982 after 37 years of employment with that company. Upon retirement, he was Director of Labour Relations and Employment.

George Drennan
Mr. Drennan was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He has been the Grand Lodge Representative for the International Association of Machinists and Aerospace Workers since 1971.

Douglas Felice
Mr. Felice was appointed to the Tribunal as a Member representative of workers effective May 14, 1986, and is currently with the Canadian Paper Workers Union.

Mary Ferrari
Ms. Ferrari was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. Her previous experience includes legal worker with the Industrial Accident Victims Group of Ontario.

Patti Fuhrman
Ms. Fuhrman was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. She was a caseworker at the Advocacy Resource Centre for the Handicapped and, more recently, was a worker with Employment and Immigration Canada.

Donald Grenville
Mr. Grenville was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has an extensive personnel management background with Texas Gulf Sulphur Canada and more recently, Canada Development Corporation.

Roy Higson
Mr. Higson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. He recently retired from the Retail, Wholesale and Department Store Union. He was the international representative of Local 414 for nine years and has 29 years of union experience.

Faith Jackson
Ms. Jackson was appointed to the Tribunal as a Member representative of workers effective December 11, 1985. A Nurses' Aid at Guildwood Villa Nursing Home from 1972 to 1985, Ms. Jackson was a member of the Executive Board of the Service Employees International Union (SEIU) for six years.

Donna Jewell
A resident of London, Ms. Jewell was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. She has been the assistant safety director of Ellis-Don Ltd. for approximately seven years. She managed the Ellis-Don WCB claims management and safety programs.

Peter Klym
Mr. Klym was appointed to the Tribunal as a Member representative of workers effective May 14, 1986. He is currently employed with the Communication Workers of Canada.

Teresa Kowalishin
Ms. Kowalishin was appointed to the Tribunal as a Member representative of employers effective May 14, 1986. She has been employed as a lawyer with the City of Toronto since her call to the Bar in 1979.

Martin Meslin
Mr. Meslin was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has over 30 years of experience in running his own business in the printing industry. He was a lay member of the Ontario Legal Aid Plan Appeals Committee.

John Ronson
Mr. Ronson was appointed to the Tribunal as a Member representative of employers effective December 11, 1985. He has an extensive background in personnel development at Stelco.

Members Who Resigned During the Reporting Period

The following part-time Tribunal Members resigned during this reporting period:

James Connor
Tribunal Member representative of employers

William Correll
Tribunal Member representative of employers

Allan MacIsaac
Tribunal Member representative of workers

Marlene Philip
Vice-Chairman

Frank Sampson
Tribunal Member representative of employers

E.A. (Ted) Seaborn
Tribunal Member representative of employers

Ken Signoretti
Tribunal Member representative of workers

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX B

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CHAIRMAN OF THE TRIBUNAL

AND

THE MINISTER OF LABOUR

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE WORKERS' COMPENSATION APPEALS TRIBUNAL ('Tribunal')

AND

THE ONTARIO MINISTRY OF LABOUR ('Ministry')

DATE: October 16, 1987

"G. Sorbara"
Minister of Labour

"S.R. Ellis"
Chairman
Workers' Compensation Appeals Tribunal

CONCURRED:

"Robert G. Elgie"
Chairman
Workers' Compensation Board

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1. INTRODUCTION AND BACKGROUND

(a) This Memorandum of Understanding constitutes a formal description and agreement on the administrative, operating and accountability relationships between the Chairman of the Workers' Compensation Appeals Tribunal ('Chairman'), the Workers' Compensation Appeals Tribunal ('Tribunal'), and the Minister of Labour ('Minister'). This agreement does not supersede the provisions of the constituting legislation, nor is it intended to interfere with the independent judicial operation of the Tribunal.

(b) The Tribunal was created by the Workers' Compensation Amendment Act, S.O. 1984, Chapter 58 — Section 32, which came into force on October 1, 1985.

(c) The Chairman shall exercise his responsibilities and activities in accordance with his Memorandum of Understanding, subject to the Workers' Compensation Act ('Act') and the powers conferred upon the Chairman by that Act.

(d) The Memorandum of Understanding is effective on the date it is executed by the Minister of Labour and the Chairman, subject to the approval of Management Board of Cabinet.

(e) The Memorandum of Understanding shall be reviewed at the request of either the Minister of Labour or the Chairman, or upon the appointment of a new Chairman or a new Minister. Any future amendments to this Memorandum of Understanding are subject to the approval of Management Board of Cabinet.

2. PURPOSE AND OBJECTIVES OF THE WORKERS' COMPENSATION APPEALS TRIBUNAL

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by the workers and employers from decisions, orders or rulings of the Workers' Compensation Board, and any matters or issues expressly conferred upon the Tribunal by the Act.

It is the objective of the Tribunal to hear appeals or applications as expeditiously and efficiently as possible in order to ensure an appellant or applicant is given a hearing without undue delay, while giving due consideration in each case to the need to identify the issues, investigate the facts, ensure the availability of necessary relevant medical and other evidence, and consider the applicable policy and law.

The Tribunal will, while attempting to keep cases on hand to a minimum, and investigating the facts of each case, carry out its operations within the budget approved by the Minister of Labour.

3. ROLE AND RESPONSIBILITIES

Minister of Labour

(a) The Minister is responsible for reporting to the Legislative Assembly and its committees on the activities, performance and expenditures of the Tribunal, and is further responsible for the preparation of any legislative amendments which may be required in the future.

(b) The Minister of Labour will:
— approve the annual budget of the Tribunal; and
— review the Tribunal's Annual Report.

(c) The Minister shall communicate to the Tribunal those policy decisions of the Government of Ontario relevant to the Tribunal's operations as required.

(d) The Minister, as the member of the Executive Council responsible for the Act, is responsible for the tabling on behalf of the Tribunal of any submissions, reports, and requests which it may make to the Legislative Assembly and its committees, to Cabinet, to Management Board of Cabinet, and other relevant government agencies.

(e) The Minister shall arrange for, and provide, the administrative support services and technical advice from the Ministry of Labour or other agencies of the Ontario Government specified herein in a manner that does not interfere with the Tribunal's ability to make independent judicial decisions.

The Workers' Compensation Appeals Tribunal

(f) The Tribunal is responsible for exercising the powers and performing the duties as described in Section 86(a) through 86(o) inclusive of the Workers' Compensation Act in an efficient, effective, fair and objective manner.

(g) The Tribunal, in exercising such powers, shall adjudicate on individual cases independent of the Government, the Minister, and the Workers' Compensation Board, or any other individual group or organization, subject only to the provisions, limitations, and conditions found in the Act.

Chairman, Workers' Compensation Appeals Tribunal

(h) The Chairman of the Tribunal is its Chief Executive Officer.

(i) The Chairman is responsible for ensuring that the legislated mandate of the Tribunal is fulfilled in an efficient and effective manner.

(j) The Chairman is responsible for the efficient, effective, fair and objective operation of the Tribunal, and as Chief Executive Officer, is accountable to the members of the Workers' Compensation Appeals Tribunal for such operations, and as Chairman is accountable to the Legislature of Ontario through the Minister.

(k) The Chairman has the obligation to provide the Minister with such information concerning the Tribunal's operations as the Minister may require for reports to the Legislative Assembly and its committees.

(l) The Chairman has the right to operate the Tribunal in accordance with the specific exemptions contained in Section 4 of this Memorandum, and for those items not specifically set out, shall operate in accordance with the administrative policies of the Government of Ontario.

(m) The Chairman of the Tribunal will prepare an annual budget and will forward this budget to the Minister for his consideration by December 31st of the calendar year preceding the fiscal year in question.

(n) The position of the Chairman must be classified under the Executive Compensation Plan.

Workers' Compensation Board ('The Board')

(o) The Board is responsible for flowing funds necessary for the day-to-day operations of the Tribunal and for incorporating such expenditures of the Tribunal as part of the Board's administrative expenses. The Board will exercise no other administrative duties other than this item.

4. ADMINISTRATION

The Tribunal has been designated a Schedule 1 Agency in accordance with Section 25-2 of the Ontario Manual of Administration, with the following specific exceptions to the guidelines governing Schedule 1 Agencies.

(a) The Chairman, according to sub-section 86b(3) of the Act may, at his discretion, establish job classifications, personnel qualifications and ranges for remuneration and benefits and may appoint, promote and employ officers and employees of the Tribunal in accordance with the Tribunal's framework of personnel, salary and benefits, subject to guidelines as established by Management Board of Cabinet.

The Chairman further agrees to take as his guidelines for the classification and remuneration for officers and staff of the Tribunal the classification and remuneration within the Civil Service, and as his guidelines for the recruiting of such officers and staff, the principles and practices of the Ontario Public Service with regard to open competitions and selection based on merit and guidelines established by Management Board of Cabinet for the public service as a whole.

The Chairman will appoint officers and staff as Crown Employees of the Tribunal, and not as employee under the Public Service Act.

Subject to an obligation to bargain collectively with Tribunal employees, full-time employees may receive employee benefits as provided in Part VI of Regulation 881 under the Public Service Act in the same manner as if such employees were appointed to the Service of the Crown under the Public Service Act and the Tribunal shall pay the employee's portion of such benefits through the appropriate Government of Ontario Plan in force.

(b) Lawyers employed by the Tribunal shall be employees of the Tribunal and not members of the Common Legal Service of the Ministry of the Attorney General.

(c) The Tribunal may, out of funds provided by the Workers' Compensation Board, acquire all forms of goods and services including office equipment, outside legal and other professional services, accommodation and information processing systems necessary for efficient and effective operations.

(d) In acquiring such goods and services, the Tribunal will follow the policies and practices used by the Ontario Government in acquiring goods and services as established by Management Board of Cabinet.

(e) Any assets, either real or intellectual property, acquired by the Tribunal, shall be considered assets of the Tribunal and shall be insured against appropriate perils by the Tribunal. It is understood that in the event of a disabandonment of the Tribunal, the title to the Tribunal's assets shall pass to the Workers' Compensation Board.

(f) The Tribunal will, while maintaining its own bank accounts for payments, use the Government's Integrated Payroll, Personnel and Employee Benefits System (IPPEBS), and receive support from the Ministry of Government Services' Employee Benefits and Data Services Branch, to record personnel information and provide a basis of benefits administration and the generation of payroll cheques and cheques to insurance carriers and to the Federal Government with regard to universal social benefits. The Tribunal will use standard government documentation for input to this system.

(g) The Tribunal will not use the Government's Central Attendance Reporting System (CARS) but will maintain its own record of vacation attendance and other credits for its staff.

(h) The Tribunal is required to adhere to the Government of Ontario's Visual Identity Program in consultation with the Secretariat of the Management Board of Cabinet and as prescribed in the Ontario Visual Identity Manual.

5. SUPPORT SERVICES

(a) Unless otherwise mutually agreed between the Ministry of Labour and the Tribunal, the Ministry of Labour will provide administrative advice and support services to the Tribunal upon request with respect to the following:
- — assistance in acquisition of accommodation and future relocation;
- — office automation, telecommunications, computer systems and related technologies;
- — purchasing;
- — personnel services: classification services, staff relations and recruitment advice;
- — liaison with central agencies (e.g. preparation of Management Board submissions);
- — internal audit services;
- — mail handling within the Ontario Public Service.

(b) Unless otherwise agreed to with the Ministry of Labour in writing, the Tribunal shall assume responsibility for, and make its own arrangements, in keeping with the provisions of Section 3(1) with respect to the following:
- — recruitment;
- — payroll, including IPPEBS input;
- — telephone installation and maintenance;
- — acquisition of professional services;
- — courier services;
- — public relations;
- — accounting and budget control systems and procedures;
- — mail handling external to the OPS;
- — forms design;
- — acquisition of furniture;
- — printing;
- — communications services;
- — library, research, archival functions;
- — facility and records security;
- — legal counsel;
- — inventory control;
- — reproduction equipment/operations.

6. FINANCIAL

(a) The Tribunal is funded directly as an administrative expense of the Workers' Compensation Board independent of the Consolidated Revenue Fund.

(b) For purposes of this agreement, the Chief Executive Officer of the Tribunal is also to be regarded as the Chief Financial Officer of the Tribunal; and as such, is responsible for the maintenance of the Tribunal's accounts in accordance with government accounting policy, subject to the Workers' Compensation Act.

(c) The Tribunal's financial year shall be from April 1st to March 31 of the following year.

(d) The Chairman of the Tribunal shall forward annually to the Minister a proposed budget for the next fiscal year which will outline:
- — the expected activity level for the various types and groups of appeals and the Tribunal's plans for handling its expected workload;
- — a calendarized expenditure estimate for the period which will indicate the following items: salaries and wages, employee benefits, transportation/communications services and supplies and equipment.

(e) The budget shall be prepared by the Tribunal in accordance with the Government's annual budget format and in conformity with generally accepted budgeting and accounting standards and practices of the Government of Ontario.

(f) The budget shall be submitted to the Minister prior to the end of the calendar year preceding the next fiscal year; that is, three months prior to the start of the next fiscal year.

(g) The Minister will give his written approval to a final budget prior to the start of the Tribunal's fiscal year.

(h) The Minister will inform the Workers' Compensation Board, in writing, of the Tribunal's approved annual budget and any subsequent changes as soon as possible after their approval.

(i) The Tribunal's expenditures shall form part of the administrative costs of the Workers' Compensation Board and shall form part of its annual financial statement.

(j) The Tribunal shall make its expenditures in accordance with the approved budget; increases in expenditures beyond the approved levels shall not be made without prior notification to, and approval of, the Minister.

(k) Increases in staff levels beyond the approved budget shall not be made without prior approval of the Minister.

(l) The Tribunal shall establish bank accounts necessary for its operations and shall keep a separate interest-bearing account for cash received from the Workers' Compensation Board, and separate accounts for payroll and benefits expenditures and, such other significant expenditure areas as, appellant and witness expenses, medical consulting fees, and a general expenditure account.

(m) The Tribunal shall not accumulate large amounts of cash on hand and will transfer money from its cash account to its expenditure accounts as required on a day-to-day basis.

(n) The Tribunal shall work closely with the Workers' Compensation Board to ensure that it has enough cash on hand at any time to meet its predicted expenditures, while not accumulating a significant cash surplus. To this end, the Workers' Compensation Board, with due consideration to the calendarized budget, shall transfer funds to the Tribunal on a monthly basis. The Tribunal will provide the Board with a detailed monthly statement of its expenditures and any significant upcoming expenditures which were not contemplated or represent a major deviation from the expected calendarized budget. The Board shall advance such monies on deposit to cover a month and a half of expenditures and that reimbursement of expenditures will be based on submission of the previous month's financial statements.

7. OTHER FINANCIAL OR OPERATING RELATIONSHIPS

(a) The Minister of Labour is responsible, with other Ministers as appropriate, for intergovernmental relations as they are required or may affect the Tribunal.

(b) The Tribunal shall not enter into any agreement with respect to borrowing, loss funding or other similar financial transactions. In this respect, the Chairman is responsible for compliance with the Manual of the Office of the Treasury.

(c) The cost of providing support services by the Ministry of Labour to the Tribunal under this Memorandum may be recovered for deposit in the Consolidated Revenue Fund from the Workers' Compensation Board. The Ministry will provide the Board with a calendarized annual estimate of the cost of these services.

8. REPORTING

(a) The Tribunal shall produce reports of a statistical, operational and financial nature during the fiscal year including:
— monthly reports of actual versus planned expenditures and projections for the balance of the year;
— monthly reports with regard to staffing levels and projected staffing levels;
— monthly reports on the status of the Tribunal's caseload.

(b) The Tribunal shall provide copies of the above reports to the Minister as required.

(c) The Tribunal shall also provide the Minister with an Annual Report for purposes of public accountability. It shall reflect the operational plans and actual activities of the Tribunal for the past year, its financial expenditures for the period and its financial position at the end of the year.

(d) The audited annual financial statements of the Tribunal, for purposes of public accountability, shall be prepared in accordance with generally accepted accounting principles and standards, and shall be audited by the Provincial Auditor or a reputable accounting firm at the end of each fiscal year.

(e) The Tribunal shall comply with the requirements of the WCB to provide audited financial statements at the end of each calendar year of the Tribunal's operation.

9. AUDIT

(a) The Tribunal, as a Schedule I Agency of the Government, is subject to routine financial and operational audit according to procedures and policies of Government and the Ministry of Labour.

(b) The Tribunal shall provide such information as may be required by the Provincial Auditor or the Ministry's Internal Auditors in the conduct of financial, management or EDP audits.

10. SUNSET REVIEW

The parties understand that the Minister is required to undertake a sunset review of the Tribunal in accordance with guidelines established by Management Board, and submit a report to Management Board by *October 1, 1988.*

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX C

WEEKLY WORKLOAD ANALYSIS

WEEKLY WORKLOAD ANALYSIS

AS AT W.E. October 2nd. 1987

1 AWAITING INITIAL PROCESSING			27	
2 INTAKE PROCESSING - CASE IN PROGRESS :				
SECTION 15			12	
SECTION 21 *			0	
SECTION 77 (note 7)			49	
SECTION 86o	- WRITTEN	2		
	- ORAL	25	27	
TOTAL CASES IN INTAKE				115
3 TCO PROCESSING :				
CASES WAITING TO BE SORTED BY TCO: NOT SORTED			11	
CASES WAITING TO BE ASSIGNED TO INDIVIDUAL TCO: SORTED			33	
CASES WAITING TO BE ASSIGNED TO TRACK 3 : SORTED			27	
ASSIGNED CASES:			71	
- CD PREPARATION IN PROGRESS (Note 5)		218		
- UNABLE TO PROCEED -SCHEDULING STATUS "C"		59		
- NOT HEARING READY		65		
- CD REQUIRED CASES ? (NOTE 1)		17		
TOTAL ASSIGNED			359	
TOTAL CASES IN TCO - PRE-HEARING				430
4 HEARING READY CASES :				
TRANSMITTAL FORMS NOT SENT TO SCHEDULING (NOTE 2)				23
5 SCHEDULING :				
ON HOLD IN SCHEDULING				
-2 WEEK WAITING PERIOD (H)			38	
CURRENT: IN PROGRESS (B)			195	
SCHEDULED CASES (D) :-				
OCTOBER/87 (4 weeks)		84		
S.77 (2 half days)		14		
NOVEMBER/87		60		
DECEMBER/87		33		
JANUARY/87		10		
TOTAL SCHEDULED (NOTE 3)			201	
TOTAL IN SCHEDULING				434
6 ** TOTAL ACTIVE PRE-HEARING WORKLOAD **				1.002
7 CASES ON HOLD				
UNSCHEDULABLE CASES IN SCHEDULING (E)			117	
PENSION CASES (IN SCHEDULING)			18	
PENSION CASES (SORTED BY TCO AND NOT ASSIGNED)			99	
PENSION CASES			274	
DORMANT			56	564
8 ** TOTAL PRE-HEARING WORKLOAD **				1.566
9 TOTAL POST-HEARING WORKLOAD : (NOTE 4)				
CASES PENDING DECISIONS FROM VICE-CHAIRS				
: FINAL			522	
: INTERIM			3	
SUB-TOTAL			525	
CASES HEARD IN WHICH HEARING IS :				
COMPLETE ON HOLD			157	
RECESSED			68	
NO KNOWN STATUS			8	
SUB-TOTAL			233	
** TOTAL POST-HEARING WORKLOAD **				758
10 POST DECISION CASES :				
OMBUDSMAN'S REQUEST			39	
RECONSIDERATION (Note 6)			19	
JUDICIAL REVIEW			7	
** TOTAL POST DECISION CASES **				65
T O T A L C A S E S I N T R I B U N A L				2.389

*See following page for explanatory notes

WEEKLY WORKLOAD ANALYSIS

as at W.E. October 2, 1987

Explanatory Notes

1. Tribunal Counsel Office (TCO) did not indicate if these cases require Case Description or not and they were not noted as ready for hearing.

2. There are 23 cases indicated as hearing ready by TCO in which SCHEDULING has not received any transmittal forms. They are related to cases in which Case Descriptions had been completed in the last two weeks.

3. The total scheduled cases of 201 does not include the following:

   RECONVENED CASES

October	12
November	6
December	4
January	1
TOTAL	23

   *THESE CASES HAVE ALREADY BEEN INCLUDED IN THE POST-HEARING WORKLOAD UNDER "RECESSED" AND "COMPLETE/HOLD" HEARINGS.

4. Please note that this category has been expanded to include cases which a hearing has begun but has not been completed, in order to give a better indication of the post-hearing workload.

5. One hundred and three of the total two hundred and eighteen Case Descriptions in progress are PENSION cases.

6. Five of the nineteen active Reconsideration applications have been assigned to Vice-Chairs and may result in a Reconsideration decision.

7. The breakdown for the 49 cases as indicated by Intake have not been received for the week.

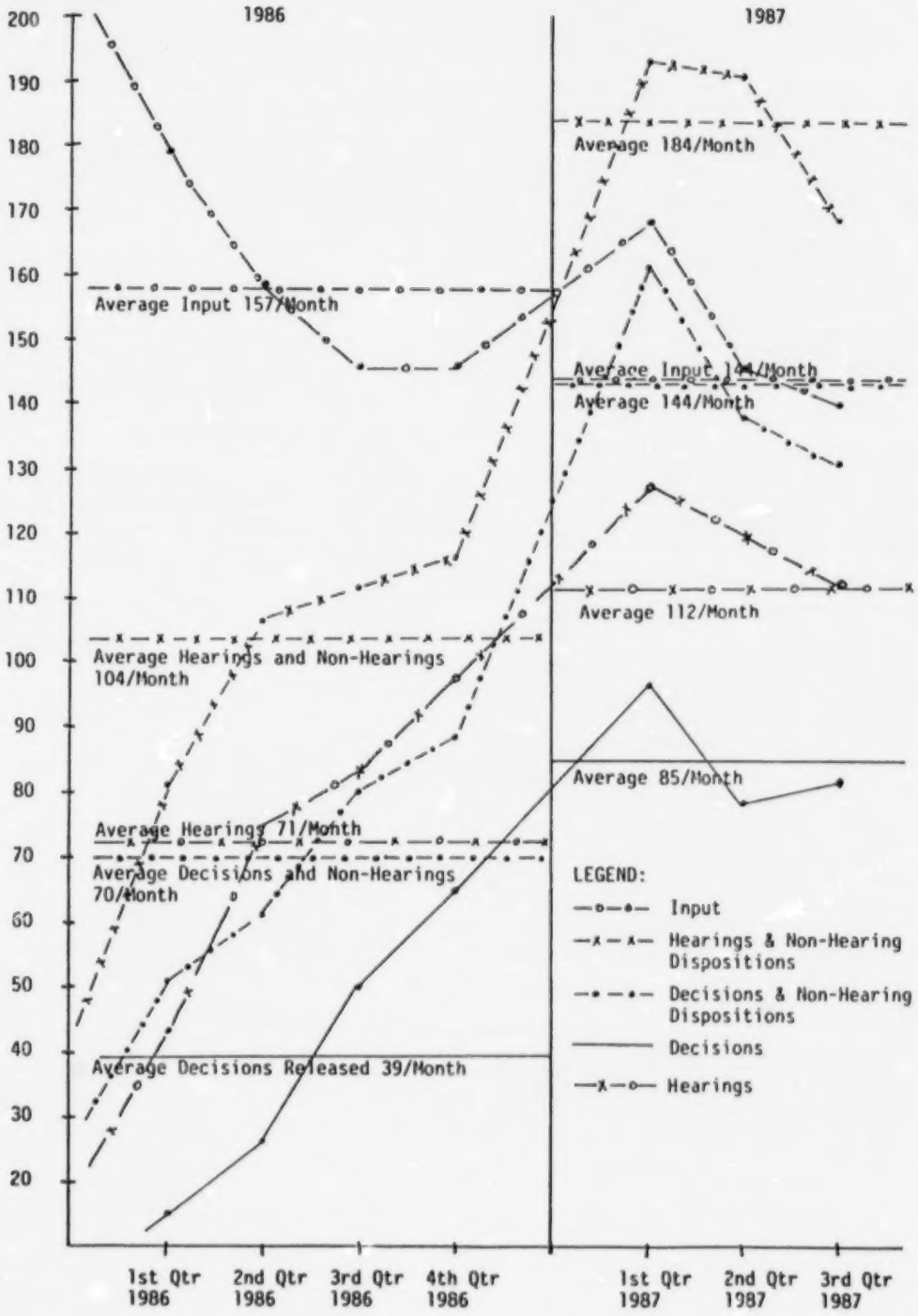
WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX D

GRAPH OF INPUT AND OUTPUT TRENDS

WORKERS' COMPENSATION APPEALS TRIBUNAL
INPUT and OUTPUT TRENDS
(QUARTERLY AVERAGES)



WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX E

INCOMING CASELOAD STATISTICS

1. Monthly Breakdown of Incoming Cases
2. Breakdown of Cases in 6-Month Bites
3. Case Input by Type of Appeal
4. Case Input by Type of Appeal (during 24-month period)

Workers' Compensation Appeals Tribunal
Second Report

MONTHLY BREAKDOWN OF INCOMING CASES

For the reporting period

October 1, 1986 to September 30th, 1987

DESCRIPTION	Previous Year Total	Oct-86	Nov-86	Dec-86	Jan-87	Feb-87	Mar-87	Apr-87	May-87	Jun-87	Jul-87	Aug-87	Sep-87	Year To Date * Total	24 month Total	%
INPUT BY TYPE :																
S.86o	287	19	12	12	7	17	7	7	9	4	5	4	10	113	400	9.0%
S.15	122	8	9	5	10	10	10	6	10	8	7	13	1	97	219	4.9%
S.21	44	7	5	4	6	4	6	8	7	9	5	13	5	79	123	2.8%
S.77	121	26	22	26	27	19	28	24	28	22	33	37	25	317	438	9.8%
Pension	352	25	14	16	13	25	16	15	19	15	10	19	5	192	544	12.2%
Commutation	3	0	0	0	0	2	0	1	3	5	1	0	3	15	18	0.4%
Employer Assessment	24	4	6	5	4	2	1	3	0	1	1	1	1	29	53	1.2%
Judicial Review	2	0	0	1	0	0	0	0	0	3	1	1	1	7	9	0.2%
Ombudsman's Request	5	1	2	3	1	3	2	7	1	8	9	4	7	48	53	1.2%
Reconsideration	7	4	4	7	1	3	3	6	6	4	3	5	2	48	55	1.2%
No Jurisdiction	157	3	5	6	3	6	6	2	5	4	4	2	6	52	209	4.7%
Entitlement & Other	1,485	117	46	65	89	89	86	64	62	63	30	79	67	857	2,342	52.5%
Total	2,609	214	125	150	161	180	165	143	150	146	109	178	133	1,854	4,463	100%

S.86o - Leave to appeal applications.
S.15 - Applications for ruling as to whether Act prohibits civil litigation.
S.21 - Worker's objection to attending at employer organized medical examination.
S.77 - Appeals on WCB decisions concerning access to worker's files.
Pension - Permanent partial disability pension appeals.
Commutation - Appeals from WCB decisions on worker's application for payment of lump sum in lieu of period payments.
Employer Assessment - Appeals by employer of WCB assessment decisions.
Judicial Review - Application to the divisional court for review of a Tribunal decision.
Ombudsman's Request - Inquiry from the Ombudsman following complaints regarding Tribunal decisions.
Reconsideration - Application for the Tribunal to reconsider a decision of the Tribunal.
No Jurisdiction - Cases found at a preliminary stage not to be within the jurisdiction of the Tribunal.
Entitlement and Others - Regular appeals from WCB decisions on entitlement and quantum plus a few miscellaneous matters.

* Based on the date of receipt of WCB files

Workers' Compensation Appeals Tribunal
Second Report

BREAKDOWN ON INCOMING CASES IN 6-MONTH BITES

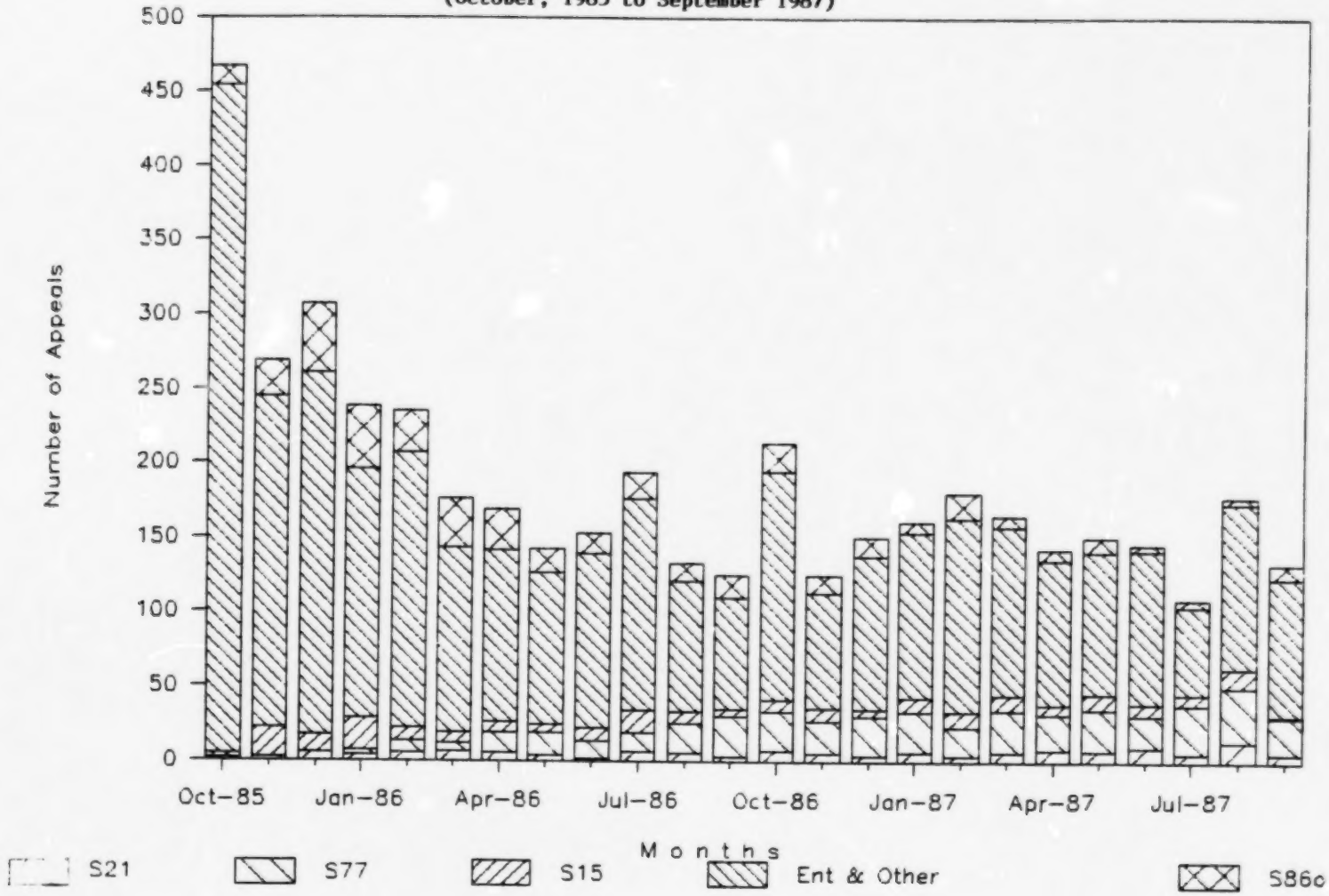
For the 24 month period October 1, 1985 to September 30th, 1987

DESCRIPTION	24 month Total	%	October 1985 to March 1986 (6 months)	April 1986 to September 1986 (6 months)	October 1986 to March 1987 (6 months)	April 1987 to September 1987 (6 months)
INPUT BY TYPE : (see note)						
S.86o	400	9.0%	185	102	74	39
S.15	219	4.9%	72	50	52	45
S.21	123	2.8%	20	24	32	47
S.77	438	9.8%	20	101	148	169
Pension	544	12.2%	252	100	109	83
Commutation	18	0.4%	2	1	2	13
Employer Assessment	53	1.2%	17	7	22	7
Judicial Review	9	0.2%	1	1	1	6
Ombudsman's Request	53	1.2%	0	5	12	36
Reconsideration	55	1.2%	0	7	22	26
No Jurisdiction	209	4.7%	115	42	29	23
Entitlement & Other	2,342	52.5%	1,008	477	492	365
Total	4,463	100%	1,692	917	995	859

Note: Please refer to Monthly Breakdown of Incoming Cases chart for detail description.

Case Input by Type of Appeal

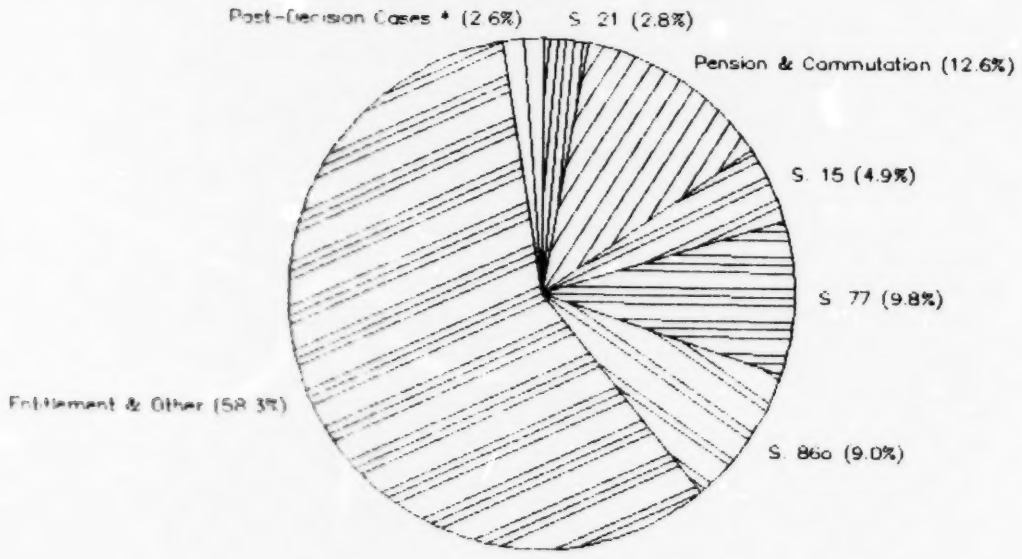
(October, 1985 to September 1987)



Workers' Compensation Appeals Tribunal
Second Report

Case Input by Type of Appeal

During 24 month period



*** Post-Decision cases include reconsideration applications, Ombudsman's inquiries and judicial review cases.**

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX F

PRODUCTION STATISTICS

1. Monthly Production Statistics
2. Monthly Current Caseload Statistics
3. Summary of Current Caseload Statistics
4. Case Disposition Analysis
5. Breakdown of Non-Hearing Dispositions

Workers' Compensation Appeals Tribunal
Second Report

MONTHLY PRODUCTION STATISTICS

For The Reporting Period

October 1, 1986 to September 30, 1987

	Previous Year Total	MONTHLY INCREMENTS Oct-86 #	Nov-86	Dec-86	Jan-87	Feb-87	Mar-87	Apr-87	May-87	Jun-87	Jul-87	Aug-87	Sep-87	Year To Date Total	24 Month Total	%
INPUT																
Number of cases	2,609	214	125	150	161	180	165	143	150	146	109	178	133	1,854	4,463	
OUTPUT																
Cases withdrawn	147	26	16	3	32	50	34	25	27	20	24	8	21	286	433	21%
Cases with no jurisdiction	162	3	10	2	10	13	6	4	7	7	5	3	8	78	240	12%
Other	4	1	0	1	0	3	1	0	1	1	0	2	1	11	15	1%
Cases disposed due to dormancy	0	0	0	0	0	1	2	17	16	16	9	5	14	80	80	4%
Cases settled	5	2	4	0	1	3	0	1	1	6	4	5	24	51	56	3%
Disposition of Post-Decision cases ##	0	2	2	1	2	6	6	3	2	15	2	0	4	45	45	2%
Disposition through Case Direction Panel	1	0	0	0	0	0	1	0	0	0	1	0	0	2	3	0%
TOTAL NON-HEARING DISPOSAL (A)	319	34	32	7	45	76	50	50	54	65	45	23	72	553	872	
Cases with final decisions issued (B) #	250	37	62	83	62	84	135	75	91	99	76	61	87	952	1,202	58%
TOTAL CASES FINALLY DISPOSED OF (A+B)	569	71	94	90	107	160	185	125	145	164	121	84	159	1,505	2,074	100%

NOTES:

\# Columns show monthly additions only
These are dispositions of Reconsideration Application, Ombudsman's Request and Judicial Review.
These figures excludes interim decisions and decisions on reconsideration applications.

Workers' Compensation Appeals Tribunal
Second Report

MONTHLY CURRENT CASELOAD STATISTICS

As at end of Reporting Period

September 30, 1987

CURRENT CASELOAD	As at End of Previous Year 30-Sep-86	----- AS AT END OF ----- 31-Oct-86	30-Nov-86	31-Dec-86	31-Jan-87	28-Feb-87	31-Mar-87	29-Apr-87	31-May-87	30-Jun-87	31-Jul-87	31-Aug-87	30-Sep-87
CASES AT PRE-HEARING STAGE	1,501	1,599	1,600	1,670	1,706	1,684	1,668	1,645	1,662	1,648	1,606	1,672	1,631
POST-HEARING CASES :													
RECESSED	75	72	67	60	52	53	58	65	73	59	65	69	68
COMPLETED BUT ON HOLD	125	51	60	76	92	128	111	135	150	190	145	168	165
READY-TO-WRITE DECISION	450	364	400	346	384	407	422	468	465	457	492	498	525
TOTAL CASES AT POST-HEARING STAGE	650	487	527	482	528	588	591	668	688	706	702	735	758
TOTAL CASELOAD	2,151	2,086	2,127	2,152	2,234	2,272	2,259	2,313	2,350	2,354	2,308	2,407	2,389

Workers' Compensation Appeals Tribunal
Second Report

SUMMARY OF CURRENT CASELOAD STATISTICS

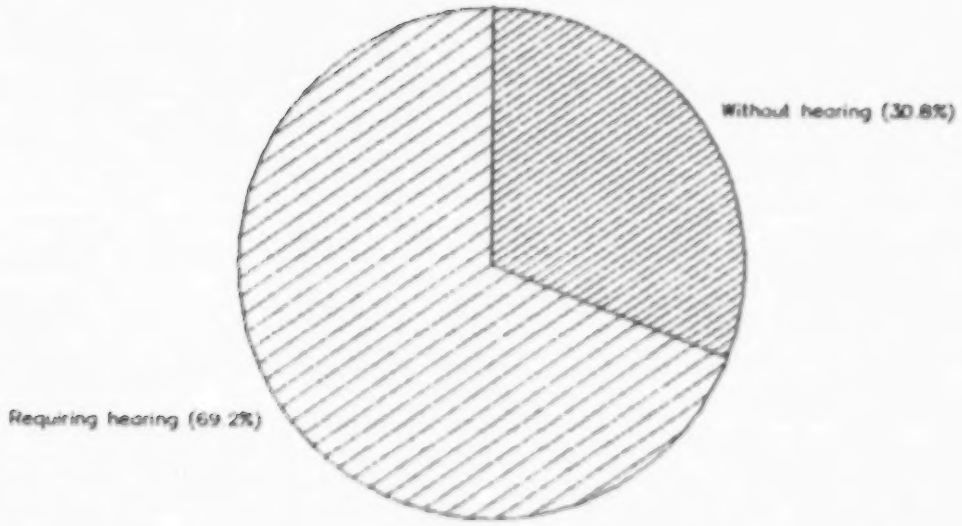
As at end of Reporting Period

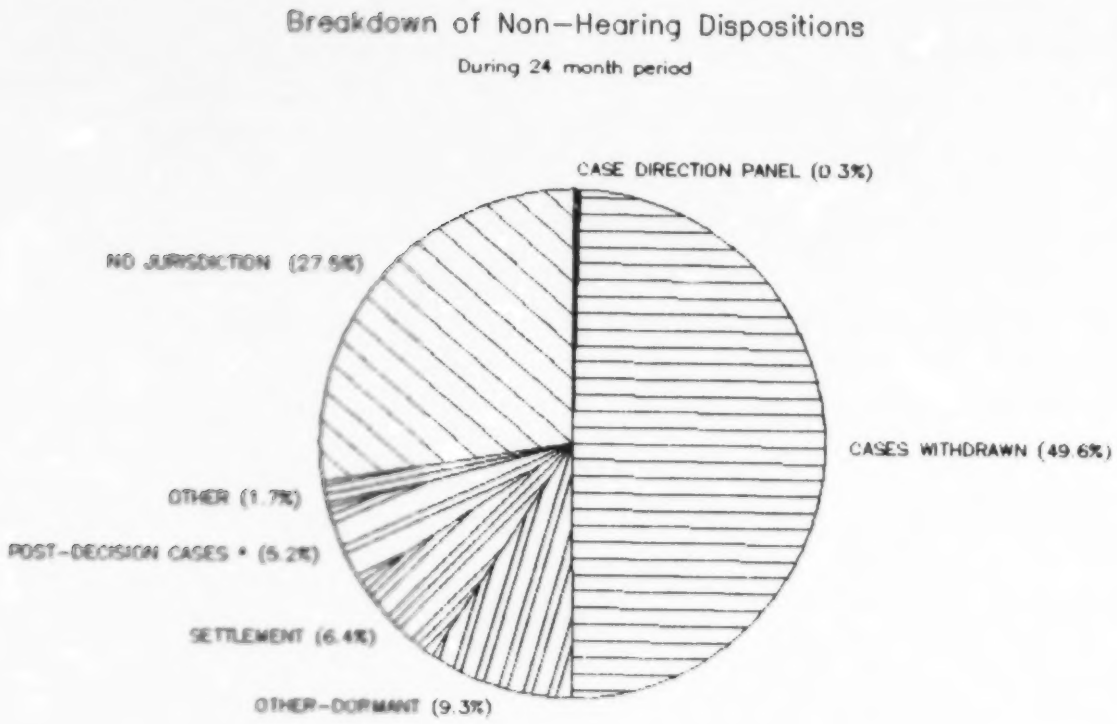
September 30, 1987

Incoming cases over 24 months	4,463
Output of cases over 24 months	2,075
Current caseload	
at pre-hearing stage	1,631
at post-hearing stage	758
Total current caseload	2,389

Case Disposition Analysis

During 24 month period





* **Post-Decision cases include reconsideration applications, Ombudsman's inquiries and judicial review cases.**

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX G

WORKER AND EMPLOYER REPRESENTATION PROFILES

WORKERS' COMPENSATION APPEALS TRIBUNAL

Employer Representation Profile

Employer :	No. of Cases	% of Total
Claims Officer	33	1%
Consultant	11	0%
Office of the Employer Advisor	49	2%
Lawyer	472	19%
Manager	54	2%
Personnel Department	188	8%
Representative*	616	25%
Safety Officer	184	7%
WCB	9	0%
Other	29	1%
None	861	35%
Sub-total	2,462	100%
Unknown (note)	1,995	
TOTAL	4,457	

NOTE: These are cases in which the representation of the employer is unknown due to a lack of internal administrative documentation prior to the installation of present procedures. The Tribunal believes the breakdown within this grouping would accord roughly with the grouping shown for the cases for which the data was kept.

*These are representatives who did not appear to fall within any of the other categories.

WORKERS' COMPENSATION APPEALS TRIBUNAL

Worker Representation Profile

Worker :	No. of Cases	% of Total
Consultant	43	1%
Lawyer**	739	21%
MP / MPP or their staff	159	5%
Representative*	900	26%
Union	563	16%
WCB	37	1%
Office of the Worker Advisor	647	19%
Other	6	0%
None	357	10%
Sub-total	3,451	100%
Unknown (note)	1,006	
TOTAL	4,457	

NOTE: These are cases in which the representation of the worker is unknown due to a lack of internal administrative documentation prior to the installation of present procedures. The Tribunal believes the breakdown within this grouping would accord roughly with the grouping shown for the cases for which the data was kept.

**Includes clinic staff lawyers.

*These are representatives who did not appear to fall within any of the other categories.

WORKERS' COMPENSATION APPEALS TRIBUNAL

SECOND REPORT

APPENDIX H

FINANCIAL STATEMENTS

FOR FISCAL PERIOD
(APRIL 1, 1986 to MARCH 30, 1987)

1. Summary Statement of Expenditure
2. Statement of Expenditures

WORKERS' COMPENSATION APPEALS TRIBUNAL
SUMMARY STATEMENT OF EXPENDITURES
AS AT MARCH 31ST, 1987
(IN '000)

	ANNUAL BUDGET	MONTHLY BUDGET	MONTHLY ACTUAL	MONTHLY VARIANCE	VARIANCE %	Y-T-D BUDGET	Y-T-D ACTUAL	Y-T-D VARIANCE	VARIANCE %
SALARIES & WAGES	3,220.3	456.5	538.3	-81.8	-17.9%	3,220.3	3,384.8	-164.5	-5.1%
EMPLOYEE BENEFITS	461.3	38.4	44.6	-6.2	-16.0%	461.3	297.8	163.5	35.4%
TRANSPORTATION & COMMUNICATION	625.0	52.1	82.8	-30.7	-59.0%	625.0	354.6	270.4	43.3%
SERVICES	3,233.6	269.5	327.8	-58.3	-21.6%	3,233.6	1,472.3	1761.3	54.5%
SUPPLIES & EQUIPMENT	153.6	12.8	38.9	-26.1	-203.9%	153.6	198.5	-44.9	-29.2%
TOTAL OPERATING EXPENDITURE	7,693.8	829.3	1,032.4	-203.1	-24.5%	7,693.8	5,708.0	1985.8	25.8%
CAPITAL EXPENDITURES	2,165.0		27.1				559.7		
TOTAL EXPENDITURES	9,858.8		1,059.5				6,267.7		

DATED:

30-Jul-87

WORKERS' COMPENSATION APPEALS TRIBUNAL
STATEMENT OF EXPENDITURES
AS AT MARCH 31ST, 1987
(IN '000)

	ANNUAL BUDGET	YEAR-TO DATE	Apr-86	May-86	Jun-86	Jul-86	Aug-86	Sep-86	Oct-86	Nov-86	Dec-86	Jan-87	Feb-87	Mar-87
SALARIES & WAGES														
1310 SALARIES & WAGES - REGULAR	3,080.3	2,748.3	34.1	288.5	200.0	207.1	202.9	216.9	333.0	215.4	214.0	205.5	216.8	414.1
1320 SALARIES & WAGES - OVERTIME	100.0	41.9	0.1	3.4	0.3	0.4	0.3	2.9	7.1	4.6	3.7	3.8	4.4	10.9
1325 SALARIES & WAGES - CONTRACT	0.0	321.1	10.6	39.5	22.3	13.6	9.5	11.4	21.7	27.2	28.2	24.8	36.7	75.6
1510 TEMPORARY HELP - GO TEMP.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1520 TEMP. HELP-OUTSIDE AGENCIES	40.0	273.5	0.0	16.1	33.6	19.1	14.7	33.9	18.1	16.2	40.0	17.5	26.6	37.7
TOTAL SALARY AND WAGES	3,220.3	3,384.8	44.8	347.5	256.2	240.2	227.4	265.1	379.9	263.4	285.9	251.6	284.5	538.3
EMPLOYEE BENEFITS														
2110 CANADA PENSION PLAN	0.0	41.6	3.8	3.0	5.2	2.9	2.4	2.1	2.0	2.9	2.1	1.9	4.1	9.2
2130 UNEMPLOYMENT INSURANCE	0.0	78.7	5.9	4.2	7.7	5.1	5.0	5.0	5.2	8.1	6.2	7.9	5.7	12.7
2220 PUB. SER. SUPERANNUATION FUND	0.0	51.5	0.0	0.0	0.0	0.0	0.0	0.0	17.5	0.0	0.0	20.1	9.2	4.7
2230 P.S.S.F. ADJUSTMENT FUND	0.0	11.7	0.0	0.0	0.0	0.0	0.0	0.0	4.0	0.0	0.0	4.5	2.1	1.1
2310 ONTARIO HEALTH INSURANCE PLAN	0.0	36.7	2.4	2.7	3.2	2.9	2.9	3.0	3.0	3.2	3.0	3.2	3.3	3.9
2320 SUPPL. HEALTH & HOSPITAL PLAN	0.0	16.6	0.0	0.0	1.2	2.4	1.2	1.3	1.4	1.5	0.0	3.0	1.6	3.0
2330 LONG-TERM INCOME PROTECTION	0.0	13.4	0.0	0.0	0.9	1.9	1.0	1.1	1.1	1.2	0.0	2.5	1.2	2.5
2340 GROUP LIFE INSURANCE	0.0	6.9	0.0	0.0	0.5	1.0	0.5	0.5	0.6	0.7	0.0	1.3	0.6	1.2
2350 DENTAL PLAN	0.0	13.9	0.0	0.0	1.0	2.0	1.0	0.0	2.3	1.2	0.0	2.6	1.3	2.5
2410 WORKER'S COMPENSATION	0.0	0.1	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2520 MATERNITY SUPP. BENEFIT ALL	0.0	17.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.9	4.5	4.5	4.3	2.2
2990 BENEFITS TRANSFER (16.58%)	0.0	9.3	0.0	0.0	1.2	1.8	0.0	1.4	0.6	0.0	1.3	0.7	0.7	1.6
TOTAL EMPLOYEE BENEFITS	461.3	297.8	12.1	9.9	21.0	20.0	14.0	14.4	37.7	20.7	17.1	52.2	34.1	44.6
TRANSPORTATION & COMMUNICATION														
3110 COURIER/OTHER DELIVERY CHARGES	5.0	37.2	0.1	1.9	1.3	3.0	1.6	2.6	2.0	1.6	3.1	5.6	5.2	9.2
3111 LONG DISTANCE CHARGES	0.0	20.3	0.0	2.1	3.2	1.6	0.0	3.2	2.4	1.3	1.3	1.4	0.9	2.9
3112 BELL TEL. - SERVICE ,EQUIPMENT	65.0	52.1	0.0	15.1	4.9	3.1	0.7	4.4	4.8	3.5	2.7	2.1	3.9	6.9
3210 POSTAGE	75.0	50.9	0.0	0.0	0.0	0.0	13.2	0.0	0.0	11.0	0.0	10.8	0.0	15.9
3410 RELOCATION EXPENSES	0.0	26.0	0.0	0.3	0.0	8.0	12.6	0.0	0.0	0.0	0.0	0.0	0.0	5.1
3610 TRAVEL - ACCOMMODATION & FOOD	205.0	47.6	0.4	3.9	3.4	3.1	0.5	3.7	7.8	6.3	3.0	2.0	2.6	10.9
3620 TRAVEL - AIR	0.0	35.2	0.2	5.2	1.5	0.8	(0.3)	1.4	4.9	4.4	3.0	3.6	1.1	9.4
3630 TRAVEL - RAIL	0.0	0.3	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
3640 TRAVEL - ROAD	0.0	17.3	0.3	1.0	1.3	0.6	0.4	1.7	1.7	1.2	1.9	1.0	1.9	4.3
3660 TRAVEL - CONFERENCES, SEMINARS	0.0	1.1	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.6	0.1	0.2	0.1	0.0
3680 TRAVEL - ATTENDANCE (HEARINGS)	225.0	34.6	0.2	3.2	3.5	4.9	3.7	1.3	2.2	1.5	5.2	2.3	1.5	5.1
3690 TRAVEL-PROFESS.& PUB. OUTREACH	50.0	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.0	0.1
3720 TRAVEL OTHER	0.0	3.5	0.0	0.6	0.7	1.0	0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.6
3721 TRAVEL-PT VICE CHAIR & REPS	0.0	27.7	0.0	0.3	0.8	0.4	2.3	0.6	1.2	1.9	2.8	3.3	1.9	12.2
TOTAL TRANSPORTATION & COMMUNI	625.0	354.6	1.2	33.7	20.6	26.6	35.3	18.9	27.0	33.3	23.3	32.8	19.1	82.8

WORKERS' COMPENSATION APPEALS TRIBUNAL
STATEMENT OF EXPENDITURES
AS AT MARCH 31ST, 1987
(IN '000)

	ANNUAL BUDGET	YEAR-TO DATE	Apr-86	May-86	Jun-86	Jul-86	Aug-86	Sep-86	Oct-86	Nov-86	Dec-86	Jan-87	Feb-87	Mar-87
SERVICES														
4120 PUBLIC RELATIONS	10.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4130 ADVERTISING - EMPLOYMENT	0.0	8.1	0.0	0.7	0.0	0.6	0.0	0.0	0.1	0.5	0.0	2.3	0.0	3.9
4210 RENTALS - COMPUTER EQUIPMENT	0.0	59.2	0.0	3.0	0.0	3.1	4.3	11.2	2.8	8.9	6.2	0.0	7.8	11.9
4220 RENTALS - OFFICE EQUIPMENT	7.5	34.2	0.0	3.2	2.5	2.9	1.5	0.5	0.7	1.0	2.0	2.1	11.1	0.7
4230 RENTALS - OFFICE FURNITURE	0.0	18.7	0.0	1.3	3.4	0.2	4.4	0.0	0.1	0.2	0.3	0.0	1.7	7.1
4240 RENTALS - PHOTOCOPYING	87.5	59.6	0.0	0.7	0.4	1.9	0.4	6.7	6.8	0.3	8.7	6.2	0.0	27.5
4260 RENTALS - OFFICE SPACE	566.6	214.3	6.3	6.3	6.3	6.3	0.0	0.0	0.0	0.0	0.0	0.0	171.5	17.6
4261 RENTALS - HEARING ROOMS	20.0	19.7	0.0	1.4	1.5	2.4	0.6	0.5	3.2	2.2	1.1	0.8	1.1	4.9
4270 RENTALS - OTHER	0.0	7.0	0.0	0.0	0.0	1.3	0.0	0.0	5.4	0.0	0.0	0.0	0.0	0.3
4310 DATA PROCESS SERVICE	0.0	36.0	0.0	0.0	0.0	0.0	1.3	0.0	0.0	3.2	7.0	6.5	3.5	14.5
4320 INSURANCE	2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4340 RECEPTIONS - HOSPITALITY	5.0	15.4	0.0	1.0	0.1	0.0	0.1	0.9	1.5	1.6	3.4	2.0	1.1	3.7
4341 RECEPTIONS - RENTALS	0.0	0.8	0.0	0.4	0.0	0.0	0.0	0.0	0.0	0.3	0.0	0.0	0.0	0.1
4350 WITNESS FEES	200.0	18.4	0.9	1.7	0.6	0.8	1.3	0.8	1.4	1.2	2.9	1.5	2.8	2.5
4351 PROCESS SERVERS - SUBPOENAS	0.0	5.2	0.0	0.9	0.7	0.1	0.0	0.1	0.2	0.1	0.2	0.2	0.1	2.6
4360 PER DIEM ALLOW-PT VC. & REPS	882.0	288.6	3.1	5.5	22.5	15.3	12.9	18.9	20.3	31.7	35.9	19.4	20.3	82.8
4410 CONSULTANTS - MGT. SERVICES	50.0	47.9	1.2	16.0	6.9	3.3	0.0	0.0	0.0	0.5	0.5	6.7	10.8	2.0
4420 CONSULTANT-SYSTEMS DEVELOPMENT	0.0	12.2	0.0	0.0	0.0	0.0	10.9	0.0	1.3	0.0	0.0	0.0	0.0	0.0
4430 COURT REPORTING SERVICES	200.0	96.5	2.4	9.6	10.4	7.0	2.9	7.2	9.0	8.3	7.7	6.2	8.8	17.0
4431 CONSULTANTS - LEGAL SERVICES	80.0	12.6	0.0	0.0	0.0	0.0	3.4	0.5	0.0	1.0	2.2	2.0	3.5	0.0
4435 TRANSCRIPTION	5.0	62.4	0.0	1.0	1.4	16.3	4.0	15.0	7.6	2.3	5.9	2.6	1.9	4.4
4440 MED. FEE-PER DIEM/RETAINER/REP	566.0	213.6	4.3	0.9	26.8	15.8	10.6	34.0	12.9	3.2	35.3	13.9	3.8	52.1
4460 RESEARCH SERVICES	0.0	7.0	0.0	0.0	0.5	1.1	3.9	0.0	0.0	0.0	0.0	0.0	0.0	1.5
4470 PRINT-DEC./NEWSLTRS/PAMPHLETS	138.0	125.9	0.0	10.6	17.1	2.2	8.7	4.4	6.9	6.5	0.4	6.6	28.8	33.7
4520 REPAIR/MAIN.-FURNIT./OFF.EQUIP	0.0	6.2	0.0	0.2	0.0	0.1	0.2	3.7	0.3	0.3	0.2	0.2	0.4	0.6
4710 OTHER-INCL. MEMBERSHIP FEES	0.0	31.3	0.2	0.1	2.7	2.7	0.5	0.3	0.1	0.3	0.5	1.0	1.3	21.6
4711 TRANSLATION & INTERPRET. SER.	200.0	48.0	0.0	4.2	3.2	5.5	0.1	2.7	2.1	4.9	2.6	7.1	3.3	12.3
4712 STAFF DEVELOPMENT-COURSE FEES	64.0	16.7	0.3	0.1	1.3	0.0	0.0	1.9	1.8	1.6	1.5	1.8	3.9	2.5
4990 MINISTRY OF LABOUR	150.0	6.8	0.0	0.0	6.1	0.0	0.0	0.7	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL SERVICES	3,233.6	1,472.3	18.7	68.8	114.4	88.9	72.0	110.0	90.5	80.1	124.5	89.1	287.5	327.8
SUPPLIES & EQUIPMENT														
5090 PROJECTORS, CAMERAS, SCREENS	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0
5110 COMPUTER EQUIP. INCL. SOFTWARE	87.6	12.5	0.0	0.4	0.0	0.6	0.0	0.0	0.0	0.7	0.0	0.0	0.0	10.8
5120 OFFICE FURNITURE & EQUIPMENT	0.0	14.9	0.2	4.5	10.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
5130 OFFICE MACHINES	0.0	0.2	0.0	0.0	0.0	0.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
5710 OFFICE SUPPLIES	36.0	122.8	0.3	6.3	4.4	6.8	21.2	7.2	9.7	6.5	18.7	6.6	11.6	23.5
5720 BOOKS, PUBLICATIONS, REPORTS	30.0	48.0	0.1	6.5	2.8	4.2	2.2	6.7	2.9	3.9	7.1	2.7	4.3	4.6
TOTAL SUPPLIES & EQUIPMENT	153.6	198.5	0.6	17.7	17.4	11.8	23.4	14.0	12.6	11.1	25.8	9.3	15.9	38.9
TOTAL OPERATING EXPENDITURES	7,693.8	5,708.0	77.4	477.6	429.6	387.5	372.1	422.4	547.7	408.6	476.6	435.0	641.1	1032.4
CAPITAL EXPENDITURES	2,165.0	559.7	0.0	0.0	0.0	5.3	29.0	355.2	57.8	40.1	3.7	11.6	29.9	27.1
TOTAL EXPENDITURES	9,858.8	6,267.7	77.4	477.6	429.6	392.8	401.1	777.6	605.5	448.7	480.3	446.6	671.0	1059.5